THE LIBYAN CIVIL CODE

an English translation
and a comparison with
the Egyptian Civil Code

by

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and

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PUBLISHER'S NOTE

While the translators and publisher affirm that this translation is as close to the original as possible, they nevertheless wish to emphasize that the only text considered official by the Government of the Republic of Libya is the Arabic *Al-Qanun al-Madani* published in the Official Gazette dated 13 February 1954, with subsequent amendments.

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PRELIMINARY CHAPTER

GENERAL PROVISIONS

Section I
Laws and Their Application

1. Laws and Rights

ARTICLE 1. (E.C. 1) RULES OF LAW

1. Provisions of law govern all matters to which these provisions apply in letter and spirit.

2. In the absence of applicable legal provisions, the Judge shall pass judgment in accordance with the principles of Islamic law. In the absence of Islamic legal precedent, he shall pass judgment according to prevailing custom, and in the absence of precedents in customary procedure, he shall pass judgment according to the principles of natural law (1) and the rules of equity.

(1) Natural justice is justice as it is in itself, in deed and in truth as contrasted with those more or less distorted images of it which may be seen in civil and international law... Salmond on Jurisprudence.

ARTICLE 2. (E.C. 2) ABROGATION OF LAWS

A provision of law can only be repealed by a subsequent law expressly providing for such repeal, or containing a provision inconsistent with a provision of the former law or regulating anew a matter previously regulated by a former law.

ARTICLE 3. (E.C. 3) CALCULATION OF PERIODS OF LIMITATION

Periods of limitation will be calculated according to the Gregorian calendar, unless expressly provided otherwise by a law.

ARTICLE 4. (E.C. 4) EXERCISE OF LAWFUL RIGHT

A person who legitimately exercises his rights (2) is not responsible for prejudice resulting thereby.

(2) A right is a prerogative, sanctioned by law, which a person may exercise in his relations with other persons.

ARTICLE 5. (E.C. 5) UNLAWFUL USE OF RIGHT

The exercise of a right is considered unlawful in the following cases :
(a) If the sole aim thereof is to harm another person.
(b) If the benefit it is desired to realize is out of proportion to the harm caused thereby to another person.
(c) If the benefit it is desired to realize is unlawful.

The Application of Laws

Conflicts of Law as to Time

ARTICLE 6 (E.C. 6) LEGAL CAPACITY (3)

1. Legislative provisions as regards the legal capacity of a person are applicable to all persons who fulfill the conditions embodied in such provisions.

2. When a person who was deemed to possess legal capacity in accordance with the provisions of a former law, becomes legally incapable in accordance with the provisions of a new law, such legal incapacity does not effect the validity of acts previously done by him.

(3) Legal capacity covers (1) the notion of the ability to acquire rights and (2) the notion of the ability to transact legal business. The former may be said to date from the time of birth, the latter is only completely acquired on the attainment of full age.

ARTICLE 7 (E.C. 7) EFFECTIVE PRESCRIPTIVE PROVISIONS

1. New legislative provisions as regards prescription apply from such time as they come into force in all cases in which the period of prescription has not been completed.

2. Former legislative provisions, however, apply as regards the date of commencement of prescription, its suspension and its interruption in respect of the period prior to the application of the provisions of the new law.

ARTICLE 8 (E.C. 8) REDUCTION OF PERIOD OF PRESCRIPTION

1. When the new law provides for a period of prescription shorter than the period provided for in the former law, the new period will apply from the date the new law came into force, even if the old period of prescription has already commenced to run.

2. If, however, the remaining period still to run under the former law is shorter than that fixed by the new law, the prescription shall be completed upon the expiry of such remaining period.

ARTICLE 9 (E.C. 9) PROOF ESTABLISHED IN ADVANCE (4)

Proof established in advance is governed by provisions of the law in force at the time when the proof was established or at the time when such proof should have been established.

(4) Proof established in advance is for example a document drawn up at the time an event takes place and in accordance with the law then in force, with view to establish the event then and thereafter, e.g., a birth, a death or marriage certificate or an acknowledgment of a debt exceeding ten pounds.

Conflicts of Law as to Place

ARTICLE 10 (E.C. 10) IN CASE OF CONFLICT RECOURSE TO BE HAD TO LIBYAN LAW

Libyan law will rule to determine the nature of legal relationship in order to ascertain the law applicable in the event of a conflict between various laws in any particular suit.

ARTICLE 11. (E.C. 11) STATUS OF LEGAL CAPACITY OF FOREIGNERS

1. The status and legal capacity of persons are governed by the law of the country to which they belong by reason of their nationality (5). If, however, one of the two parties to a financial transaction concluded in Libya and having effect in Libya, is a foreigner without legal capacity, and if such lack of capacity is not apparent to, or easily discoverable by, the other party, then this does not prejudice the foreigner's legal capacity.

(5) The phrase "the law of the country to which they belong by reason of their nationality" is the literal translation of the Arabic text. The phrase used in the French official translation (of the Egyptian Civil Code) is "their national law".

ARTICLE 12 (E.C. 12) MARRIAGE

The fundamental conditions relating to the validity of marriage are governed by the (national) (6) law of each of the two spouses.

(6) Neither the word "national" nor the words "of the country to which the husband belongs" appear in the Arabic text. The word "national" has however been inserted in the official French translation (of the Egyptian Civil Code).

ARTICLE 13. (E.C. 13) MARITAL RELATIONS AND REPUDIATION. DIVORCE AND SEPARATION.

1. The effects of marriage, including its effects upon the property of the spouses, are regulated by the law of the country to which the husband belongs at the time of the conclusion of the marriage.

2. Repudiation of marriage is governed by the law of the country to which the husband belongs (7) at the time of repudiation, whereas divorce and separation are governed by the law of the country to which the husband belongs at the time of the commencement of the legal proceedings.

(7) The phrase "the law of the country to which the husband belongs" is the literal translation of the Arabic text. The words used in the French official translation (of the Egyptian Civil Code) are however "the national law".

ARTICLE 14 (E.C. 14) IF ONE OF THE SPOUSES IS LIBYAN

If, in the cases provided for in the two preceding Articles one of the two spouses is a Libyan at the time of the conclusion of the marriage, Libyan law alone shall apply except as regards the legal capacity to marry.

ARTICLE 15 (E.C. 15) ALIMONY

Obligations as regards payment of alimony to relatives are governed by the (national) (8) law of the person liable for such payment.

(8) The word "national" is not in the Arabic text, but only in the official French translation (of the Egyptian Civil Code).

ARTICLE 16 (E.C. 16) PERSONS WHO SHOULD BE PROTECTED

The (national) (8) law of a person who should be protected shall apply in respect of all fundamental matters relating to natural and legal guardianship, receivership and other forms o. protection of persons without legal capacity and of absent persons. (9)

(9) An absent person is not a person merely away from his home but a person as to whose existence there is a doubt or uncertainty. Compare Quebec Civil Code Art. 86: "An absent person, within the meaning of this Title, is one who, having a domicile in Lower Canada, has disappeared without anyone having received intelligence of his existence".

ARTICLE 17 (E.C. 17) INHERITANCE AND WILLS

1. Inheritances, wills and other dispositions taking effect after death are governed by the (national) (8) law of the de cujus, the testator or the person disposing of property at death.

2. The form of a will, however, is governed by the (national) (8) law of the testator at the time the will is made, or by the law of the country in which the will is made. The same principles apply to the form of other dispositions taking effect after death.

ARTICLE 18 (E.C. 18) POSSESSION AND REAL RIGHTS

Possession, ownership and other real rights (10) are regulated, as regards immovables, by the law of the place in which the immovable is situate, and, as regards movables, by the law of the place where the movable was situate at the time when the event occurred which resulted in the acquisition or loss of possession, ownership or other real rights.

(10) "Real Right" is the right of a man to enjoy possession and to use some portion of the physical world, immovable or movable, and to dispose of it as he thinks fit. It is what we call ownership. It is a right against all the world to cry: "hands off". (Walton Vol. 1 page 5).

ARTICLE 19 (E.C. 19) CONTRACTUAL OBLIGATIONS

1. Contractual obligations are governed by the law of the domicile when such domicile is common to the contracting parties, and in the absence of a common domicile by the law of the place where the contract was concluded. These provisions are applicable unless the parties agree, or the circumstances indicate that it is intended to apply another law.

2. Contracts relating to immovables, however, are governed by the law of the place in which the immovable is situate.

ARTICLE 20 (E.C. 20) FORM OF CONTRACTS

Contracts between living persons are governed as regards their form by the law of the country in which the contracts are concluded. They may also be governed by the law regulating the basic provisions of a contract, by the law of the domicile (11) of the parties or by their common national law.

(11) For definition of "domicile" see Articles 40-43 and 53.

ARTICLE 21 (E.C. 21) NON-CONTRACTUAL OBLIGATIONS

1. Non-contractual obligations are governed by the law of the State in whose territory the act that gave rise to the obligation took place.

2. When, however, the obligation arises from a tort, the provisions of the preceding paragraph shall not apply to an act which occurred abroad and which, although considered unlawful in accordance with the law of the country in which the act occurred, is considered lawful in Libya.

ARTICLE 22 (E.C. 22) PRINCIPLES OF COMPETENCE OF COURTS AND QUESTIONS OF PROCEDURE

Principles of Competence of Courts and all questions of procedure are governed by the law of the country in which the action is brought, or in which proceedings are taken.

ARTICLE 23 (E.C. 23) SPECIAL LAWS AND INTERNATIONAL CONVENTIONS

The provisions of the preceding Articles only apply when no provisions to the contrary are included in a special law or in an International Convention in force in Libya.

ARTICLE 24 (E.C. 24) APPLICATION OF PRINCIPLES OF PRIVATE INTERNATIONAL LAW

The Principles of Private International Law apply in the case of a conflict of laws for which no provision is made in the preceding Articles.

ARTICLE 25 (E.C. 25) PERSONS OF UNKNOWN OR PLURAL NATIONALITY

1. In the case of a person of unknown nationality the law to be applied will be decided by the Judge.

2. Libyan law shall apply, however, if a person is deemed in Libya to be of Libyan nationality and is at the same time deemed by one or more foreign States to be a national of that or those States.

ARTICLE 26 (E.C. 26) PLURALITY OF LAWS

When, in accordance with the preceding provisions, it appears that the law to be applied is the law of a State in which several legal systems exist, the law applicable shall be determined by the internal law of that State.

ARTICLE 27 (E.C. 27) EXTENT OF APPLICATION OF FOREIGN LAW

In the cases where a foreign law is applicable only the internal provisions of such foreign law shall apply to the exclusion of provisions relating to Private International Law.

ARTICLE 28 (E.C. 28) PUBLIC POLICY OR MORALITY

The provisions of a foreign law applicable by virtue of the preceding Articles shall not be applied if these provisions are contrary to public policy or to morality in Libya. (12)

(12) A transaction is regarded in England, for example, as having an object contrary to public policy if it contemplates: (a) unreasonable restraint of trade, (b) evasion of obligations imposed by law, (c) purchase or sale of an honour or public office, (d) assignment of the salary of a public office, (e) jobbery in the public service, (f) defeat or delay of creditors, (g) stifling of prosecution for a criminal offence, or other perversion of the course of justice, (h) a breach of international comity.

Section II

Persons

1. Individuals

ARTICLE 29 (E.C. 29) COMMENCEMENT AND END OF LEGAL PERSONALITY

1. Legal personality commences from the time a child is born alive and ends at death.

2. The law, however, determines the rights of a child en ventre de sa mere.

ARTICLE 30 (E.C. 30) PROOF OF BIRTH AND DEATH

1. Birth and Death are established by means of official registers specially kept for this purpose.

2. In the absence of such proof, or if the INACCURACY OF THE ENTRIES IN THESE REGISTERS IS ESTABLISHED, proof may be established by any other means.

ARTICLE 31 (E.C.31) REGISTERS OF BIRTHS AND DEATHS

Registers of and declarations connected with births and deaths are regulated by a special law.

ARTICLE 32 (E.C.32) MISSING AND ABSENT PERSONS

Missing persons and absent persons are subject to provisions contained in special laws; in the absence of such special laws, Islamic law will be applied.

ARTICLE 33 (E.C. 33) LIBYAN NATIONALITY

Libyan Nationality is governed by a special law.

ARTICLE 34 (E.C. 34) THE FAMILY

1. The family of a person is composed of his relatives.

2. Persons having a common ascendant are deemed to be relatives.

ARTICLE 35 (E.C. 35) RELATIONSHIP

1. Direct lineal relationship is the relationship existing between ascendants and descendants.

2. Collateral relationship is the relationship existing between persons who have a common ascendant without one of them being a descendant of the other.

ARTICLE 36 (E.C. 36) THE DEGREE OF RELATIONSHIP

The degree of relationship will be calculated, as regards direct lineal relationship, by ascending to the common ancestor and counting each relative excluding the common ancestor. The degree of relationship will be calculated, as regards collateral relationship by ascending from the descendant to the common ancestor, then descending to the other descendant. Each relative, excluding the common ancestor, counts for one degree.

ARTICLE 37 (E.C. 37) RELATIVES OF SPOUSES

The relatives of either of the two spouses are deemed to be relatives of the other spouse, in the same line and of the same degree.

ARTICLE 38 (E.C. 38) FIRST NAME AND FAMILY NAME

Every person must have a first name and a family name. The family name of a person is bestowed upon his children.

ARTICLE 39 (E.C. 39) ACQUISITION AND CHANGE OF FAMILY NAME

Acquisition and change of family name will be governed by special legislation.

ARTICLE 40 (E.C. 40) DOMICILE

1. A domicile is the place where a person habitually resides.

2. A person may have more than one domicile at the same time, or he may have none.

ARTICLE 41 (E.C. 41) DOMICILE OF PERSON EXERCISING TRADE OR PROFESSION

The place where a person exercises a trade or profession is considered as his domicile as regards matters carried on in connection with such trade or profession.

ARTICLE 42 (E.C. 42) DOMICILE OF MINORS, PERSONS UNDER DISABILITY, MISSING AND ABSENT PERSONS

1. The domicile of a minor, a person under legal disability, a missing person or an absent person will be the domicile of his legal representative.

2. A minor who has attained eighteen years and a person in a similar legal position shall nevertheless have his special domicile in respect of acts he is capable of performing in accordance with the law.

ARTICLE 43 (E.C. 43) ELECTION OF DOMICILE

1. A special domicile may be elected for the performance of a specific legal act.

2. The election of domicile must be evidenced by writing.

3. A domicile elected for the performance of a legal act shall be deemed to be the domicile in so far as all matters relating to such act are concerned, including the procedure for enforcement by legal means unless the election of domicile is expressly limited to certain special acts, excluding others.

ARTICLE 44 (E.C. 44) ATTAINMENT OF LEGAL CAPACITY AND MAJORITY

1. All persons attaining majority in possession of their mental faculties and not under legal disability, have full legal capacity to exercise their civil rights.

2. The majority of a person is fixed at twenty-one years completed in accordance with the Gregorian Calendar.

ARTICLE 45 (E.C. 45) LEGAL INCAPACITY

1. A person devoid of discretion owing to youth, feeble mindedness or insanity is incapable of exercising his civil rights.

2. A person who has not attained the age of seven is considered devoid of discretion.

ARTICLE 46 (E.C. 46) LIMITED LEGAL CAPACITY

A person who has reached the age of discretion but has not attained majority and a person who has attained his majority but is a prodigal or an imbecile, has a limited legal capacity according to the provisions of the law.

ARTICLE 47 (E.C. 47) PROTECTION OF PERSONS OF LEGAL INCAPACITY AND LIMITED LEGAL CAPACITY

Persons deprived of full or partial legal capacity are governed, as the case may be, by the rules of natural or legal guardianship or curatorship subject to the conditions and in accordance with the rules laid down by law.

ARTICLE 48 (E.C. 48) PROTECTION OF LEGAL CAPACITY

No person can renounce his legal capacity or modify the rules relating thereto.

ARTICLE 49 (E.C. 49) PROTECTION OF PERSONAL FREEDOM

No person can renounce his personal liberty.

ARTICLE 50 (E.C. 50) PROTECTION OF RIGHTS INHERENT IN PERSONALITY (13)

A person whose rights inherent in his personality have been unlawfully infringed shall have the right to demand the cessation of the infringement and compensation for any damage sustained thereby.

(13) The rights inherent in a person's personality are the right to possess a family status, the faculty to have property and the right to enjoy the essential liberties of an individual.

ARTICLE 51 (E.C. 51) PROTECTION OF NAME

A person whose right to the use of his name is unlawfully disputed by another, or a person whose name is unlawfully used by another shall have the right to demand cessation of the infringement and compensation for any damage sustained thereby.

2. Juristic Persons

ARTICLE 52 (E.C. 52) JURISTIC PERSONS

Juristic Persons are :

1. The State, the provinces (mudirias), towns and villages in accordance with the provisions fixed by law; administrations, departments and other public institutions to which the law has granted the status of juristic persons.

2. Religious groups and communities which the State has recognised as juristic persons.

3. Awqaf.

4. Commercial and civil corporations.

5. Associations and Foundations created in accordance with the subsequent provisions hereof.

6. Any group of persons or properties recognised as juristic persons by virtue of a provision of the law.

ARTICLE 53 (E.C. 53) RIGHTS OF JURISTIC PERSONS

1. A juristic person enjoys, within the limits established by law, all rights, with the exception of those rights which are inherent in the nature of an individual.

2. A juristic person has:

(a) Its own "patrimonium" (Proprietory Rights) (14);

(b) Legal capacity, within the limits fixed by its constitution or established by law;

(c) The right to sue;

(d) Its own domicile. This domicile is the place where its seat of management is situate. A corporation whose seat of management is situate abroad but operates in Libya is deemed, in accordance with internal law, to have its seat of management at the place where its local seat of management is situate.

(14) "Patrimonium" means the mass of legal relationships, of pecuniary value, which constitute the assets and liabilities of an individual or of a juristic person.

3. A juristic person has a representative to express its will.

Associations

ARTICLE 54 (E.C. 54) DEFINITION OF ASSOCIATION

An association is a group of permanent character, formed by a number of individuals or juristic persons with an object other than the realisation of material profit.

ARTICLE 55 (E.C.55) SCHEME OF MANAGEMENT AND DEED OF INAUGURATION

1. In order to be duly formed an association must have a written scheme of management signed by its founders.

2. The scheme of management of an association must contain the following particulars:

(a) The name, object and seat of management of the association, which seat of management must be situated in Libya;

(b) The first name, family name, nationality, profession and domicile of each of its founders;

(c) The resources of the association;

(d) The bodies that represent the association, their attributions and the methods of appointment and revocation of the members of these bodies;

(e) The rules to be followed for the purpose of altering the scheme of management of the association.

ARTICLE 56 (E.C. 56) SPECIAL PROVISIONS AS TO DISSOLUTION OF ASSOCIATION

1. The scheme of management of an association must not provide that the property of the association will, upon dissolution, devolve on the members, their heirs or their families.

2. This provision does not apply to money assigned solely to funds for mutual assistance or for a pension fund.

ARTICLE 57 (E.C. 57) LIMITATION OF RIGHT OF OWNERSHIP

1. An association may own immovables and enjoy other real rights only in so far as it is necessary to do so for the realization of the objects for which it was formed.

2. This provision does not apply to associations whose objects are solely charitable, educational or for the purpose of scientific research.

ARTICLE 58 (E.C. 58) PROOF OF JURISTIC PERSONALITY

1. An association, once constituted, acquires the status of a juristic person.

2. This status can be set up against a third party only after publication of the scheme of management of the association.

ARTICLE 59 (E.C. 59) PUBLICATION OF THE SCHEME OF MANAGEMENT

1. Publication is effected in accordance with the provisions of the law.

2. Failure to effect publication or the use of other means to evade legally establishing the existence of the association shall not prevent a third party availing himself against the association of the effects inherent in the status of a juristic person.

3. An association that has not complied with the formalities of publication, that has not been validly constituted or that has been formed secretly, shall nevertheless be held responsible for engagements undertaken by its managers or by those who act on its behalf. Execution in respect of such undertakings can be levied on the property of the association whether such property arises from members contributions or from any other source.

ARTICLE 60 (E.C. 60) AMENDMENT OF SCHEME OF MANAGEMENT

Amendments to the scheme of management of the association must be published in accordance with the provisions of Article 59. The amendment may only be set up against third parties from the date of publication.

ARTICLE 61 (E.C. 61) GENERAL MEETING

A resolution in general meeting is necessary for the approval of the budget and of the balance sheet, for an amendment of the scheme of management and the voluntary dissolution of the association.

ARTICLE 62 (E.C. 62) RESOLUTIONS OF THE GENERAL MEETING

1. All active members must be given notice to attend general meetings.

2. Resolutions in general meeting are taken by a majority of the members present or represented, unless the scheme of management provides otherwise.

3. Resolutions taken in general meeting as to an alteration to the scheme of management or the voluntary dissolution of the association are invalid unless these items were included in the agenda accompanying the convening notice. A resolution as to the amendment of the scheme of management must be passed by the absolute majority of the members of the association, and a resolution as regards dissolution or an amendment to the objects of the association, must be passed by two-thirds of the members of the association. All these provisions apply unless the scheme of management of the association requires a larger majority.

ARTICLE 63 (E.C. 63) ANNULMENT OF RESOLUTIONS OF THE GENERAL MEETING

1. All resolutions passed in general meeting which are contrary to law or to the scheme of management of the association may be annulled by the Judgment given by the Court of First

Instance in whose district the association has its seat, provided that the annulment proceedings are instituted by one of the members, by a third party having an interest, or by the Parquet, within six months from the date of the resolution.

2. Annulment proceedings, however, cannot be set up against third parties, who may have acquired rights in good faith, as a result of the resolution in question.

ARTICLE 64 (E.C. 64) NOTE: Liquidators are not mentioned in E.C.

ANNULMENT OF ACTS PERFORMED BY MANAGERS OF AN ASSOCIATION

1. Acts performed by the managers of an association exceeding the limits of the powers attributed by them or contrary to the provisions of the law, or of the scheme of management of the association or to a resolution in general meeting, can be annulled by a Judgment of the Court of First Instance in whose district the association has its seat upon application by any one of the members, or by the liquidators or by the Parquet.

2. Proceedings must be instituted within one year from the date of the act to be annulled.

3. Annulment proceedings cannot be set up against third parties who have acquired rights in good faith as a result of such acts.

ARTICLE 65 (E.C. 65) RETIREMENT AND EXPULSION OF MEMBERS

1. A member may, unless he has undertaken to continue to be a member of the association for a fixed period, retire at any time.

2. A resolution to expel a member may not be made except for grave reasons and if these circumstances arise then the member may have recourse to judicial remedies within six months from the date he is notified of the resolution.

A retiring member, as well as a member who has been expelled from an association, has no rights over the association's property, except in cases where the association holds funds for mutual assistance and pensions as mentioned in paragraph 2 of Article 56, in which case the scheme of management may provide otherwise.

(Para. 2 of this Article is not in E.C.)

ARTICLE 66 (E. C. 66) DISSOLUTION OF THE ASSOCIATION

1. An association may be dissolved by a Judgment of the Court of First Instance in whose district the association has its seat, upon application by a member, or other person having an interest, or by the Parquet, if the association becomes unable to meet its liabilities, or if its property, or the income thereof, has been applied to objects other than those for which the association was formed, or if there has been a serious violation of the scheme of management of the association, of the law or of public policy.

2. The Court may, although rejecting an application for dissolution, add an order that the impugned act be annulled.

ARTICLE 67 (E. C. 67) APPOINTMENT OF LIQUIDATORS

When an association is dissolved, one or more liquidators shall be appointed in general meeting in case of voluntary dissolution, or by the Court in case of judicial dissolution.

ARTICLE 68 (E. C. 68) DISPOSAL OF PROPERTY

1. When the liquidation has been completed, the liquidator will proceed with the distribution of any remaining property of the association in accordance with the provisions laid down in the scheme of management of the association.

2. If the scheme of management of the association makes no provision for the distribution on liquidation, or if the distribution cannot be made in the manner provided for in the scheme of management, the association in general meeting, in the case of voluntary dissolution, or the Court in the case of judicial dissolution, will allocate the property of the dissolved association to another association or institution whose objects most closely approximate to the objects of the dissolved association.

ARTICLE 69 (E.C. 69) DEFINITION OF FOUNDATION

A foundation is a juristic person created by setting aside for an indefinite period property for a philanthropic, religious, scientific, artistic, sporting or other purpose of a charitable nature or of public interest, which does not have for its object the realization of any material gain.

ARTICLE 70 (E.C.70) CONSITUTION OF FOUNDATION

1. A foundation may be created by an authenticated deed or by will.

2. This deed or will shall be deemed to be the constitution of the foundation. It must contain the following particulars :-

(a) the name of the foundation, and its seat, which must be situated in Libya;
(b) the purposes for which the foundation is created;
(c) an exact and detailed description of the property allocated to the foundation.
(d) a scheme for the management of the foundation.

3. The juristic personality of the foundation shall be established as soon as it is acknowledged by the appropriate authority.

ARTICLE 71 (E.C.71) QUALITY OF FOUNDATION IN RELATION TO OTHERS

The creation of a foundation shall be deemed, as regards the grantor's creditors, or his heirs, as a gift or as a will. If the creation of the foundation is detrimental to their interests, they may exercise such rights of action as the law allows in similar cases as regards gifts and wills.

ARTICLE 72 (E.C. with slight variation) REVOCATION OF THE CREATION OF A FOUNDATION

When a foundation has been created by an authenticated deed, the grantor may, before acknowledgment of the foundation by the appropriate authority, revoke it by another authenticated deed.

ARTICLE 73 (E.C. 73) PUBLICATION

1. Publication formalities in respect of the foundation are effected at the request of the grantor, of its first manager or of the authority in charge of the supervision of foundations.

2. The authority in charge of the supervision of foundations will proceed with the necessary formalities of publication, immediately upon becoming aware of the creation of the foundation.

3. The provisions of Articles 58, 59 and 60 will apply to foundations.

ARTICLE 74 (E.C. 74) SUPERVISION OF STATE

Foundations are subject to State supervision.

ARTICLE 75 (E.C. 75) DUTIES OF MANAGERS OF A FOUNDATION IN RELATION TO SUPERVISORY AUTHORITY

The managers of a foundation must submit to the Supervisory authority the budget of the foundation and its annual balance sheet with supporting vouchers. The managers shall also supply all other information or particulars required by the supervisory authority.

ARTICLE 76 (E.C. 76) POWERS OF THE COURT OF FIRST INSTANCE

The Court of First Instance in whose district the foundation has its seat may, upon legal proceedings being taken by the supervisory authority, order the following measures:-

(a) The removal of managers found guilty of negligence or incapacity and managers who have not fulfilled the obligations imposed upon them by law or by deed of foundation, who have employed the property of the foundation in a manner contrary to the purpose of the foundation or to the objects of the grantor, or who have, in the exercise of their functions, committed some other very serious fault:

(b) the alteration of the scheme of management, or the alleviation, modification or suppression of the charges and conditions provided for in the deed of foundation, if such measures are necessary for the preservation of the property of the foundation, or for the realization of the objects for which the foundation was created;

(c) the dissolution of the foundation, if it can no longer realize the objects for which it was created, or if the objects are no longer attainable or have become illegal or contrary to morality or to public policy;

(d) the annulment of acts done by the managers in excess of the limits of the powers attributed to them or contrary to the provisions of the law or to the rules of the foundation. In such a case annulment proceedings must be commenced within two years from the date of the alleged wrongful act, without prejudice to third parties of good faith who have acquired rights by reason of the act.

ARTICLE 77 (E.C. 77) LIQUIDATION OF THE FOUNDATION

1. The Court, when pronouncing the suppression of the foundation, will appoint a liquidator and will give a decision as regards the ultimate destination of the property remaining after liquidation, in accordance with the provisions of the foundation deed.

2. If the devolution of the property to the recipient designated in the deed becomes impossible, or if the foundation deed does not include the designation of any recipient, the Court will allocate the property to a destination as close as possible to the object for which the foundation was created.

ARTICLE 78 (E.C.78) AWQAF

The provisions contained in this law relating to foundations are not applicable to foundations constituted in the form of Awqaf.

General Provisions Applicable both to Associations and to Foundations

ARTICLE 79 (E.C. 79) ASSOCIATIONS AND FOUNDATIONS AS PUBLIC UTILITIES

1. Associations whose purpose is the realization of a public interest and foundations may, upon application, be recognised as institutions of public utility by a decree approving their constitution.

2. The decree may stipulate that the association shall be exempt from the restrictions as to its legal capacity laid down in Article 57.

3. The decree may impose special measures of supervision, such as the nomination of one or several managers by the Government, or any other measure as may be considered necessary.

ARTICLE 80 (E.C. 80) CHARITABLE SOCIETIES, CO-OPERATIVE SOCIETIES, SOCIAL FOUNDATIONS AND TRADE UNIONS

Charitable societies, co-operative societies, social foundations, and trade unions (syndicates) are regulated by law.

Section III

The Classification of Things and Property

ARTICLE 81 (E.C. 81) THINGS WITHIN AND OUTSIDE THE AMBIT OF TRADE

1. Anything that is not outside the ambit of trade by its nature or by virtue of the law, may be the object of proprietory rights.

2. Things outside the ambit of trade by their nature are things that cannot be objects of exclusive possession. Things outside the ambit of trade by law are things which, in accordance with law, cannot be objects of proprietory rights.

ARTICLE 82 (E.C. 82) IMMOVABLES AND MOVABLES

1. Things which are fixed and which cannot be removed without damage are immovables. All other things are movables.

2. A movable placed by its owner in an immovable owned by him with the intention of serving or exploiting such immovable is considered an immovable by reason of its destined use.

ARTICLE 83 (E.C. 83) REAL RIGHTS OVER IMMOVABLE PROPERTY

1. All real rights over immovable property including the right of ownership and all suits relating to a real right over an immovable are deemed to be immovable property.

2. All other proprietory rights are deemed to be movable property.

ARTICLE 84 (E.C. 84) CONSUMABLE THINGS

1. Consumable things are those things whose utility, by reason of their destined use, consists in their consumption or disposal.

2. All things destined for sale in commercial establishments are deemed to be consumable.

ARTICLE 85 (E.C. 85) FUNGIBLES

Fungibles are those things which can be replaced one by another in a payment and which it is customary in trade to estimate by number, measure, volume or weight.

ARTICLE 86 (E.C. 86) RIGHTS IN RESPECT OF NON-MATERIAL OBJECTS

Rights in respect of a non-material object are regulated by special laws.

ARTICLE 87 (E.C. 87) PUBLIC PROPERTY

1. Immovable and movable property owned by the State or other public juristic persons and allocated either in fact or by virtue of a law or a decree for purposes of public utility, forms part of the public domain.

2. Such immovable and movable property is not alienable, is not liable to seizure nor to acquisition by prescription.

ARTICLE 88 (E.C. 88) LOSS BY PUBLIC PROPERTY OF ITS QUALITY

Properties forming part of the public domain lose this status with the cessation of their allocation for public utility purposes. This cessation takes place by virtue of a law, or a decree, or in fact or if the object of public utility for which they were allocated comes to an end.

FIRST PART

OBLIGATIONS OR PERSONAL RIGHTS

BOOK ONE

OBLIGATIONS GENERALLY

Chapter I

Sources of Obligations

Section I

Contracts

1. Elements of Contracts

Consent

ARTICLE 89 (E.C. 89) CREATION OF CONTRACT

A contract is created, subject to any special formalities that may be required by law for its conclusion, from the moment that two persons have exchanged two concordant intentions.

ARTICLE 90 (E.C. 90) DECLARATION OF INTENTION

1. An intention may be declared verbally, in writing, by signs in general use, and also by such conduct as, in the circumstances of the case, leave no doubt as to its true meaning.

2. A declaration of intention may be implied when neither the law nor the parties require it to be expressed.

ARTICLE 91 (E.C. 91) EFFECT OF DECLARATION OF INTENTION

A declaration of intention becomes effective from the time that it comes to the knowledge of the person for whom it was intended, who, subject to proof to the contrary, shall be deemed to have knowledge of the declaration of intention from the time that it reaches him

ARTICLE 92 (E.C. 92) DEATH OF HIM WHO DECLARED THE INTENTION OR LOSS BY HIM OF LEGAL CAPACITY

If the person who declares the intention dies or becomes legally incapable before the declaration of intention takes effect, the declaration of intention shall not be less effective at the time it comes to the knowledge of the person for whom it was intended, unless the contrary is shown by the declaration of intention or by the nature of the transaction.

ARTICLE 93 (E.C. 93) TIME OF ACCEPTANCE

1. When a time limit is fixed for acceptance, the person who makes the offer is bound to maintain his offer until the expiration of the time limit.

2. The time limit may result from the circumstances or from the nature of the transaction.

ARTICLE 94 (E.C. 94) OFFER AT TIME OF FRAMING OF CONTRACT

1. If at the time a contract is being framed an offer is made to a person present (16) without a time limit being fixed for acceptance, the offeror is released from his offer if it is not accepted forthwith. This also applies if the offer is made by .ne person to another person by telephone or by any other similar means.

(16) In the official French translation of the E.C. only, not in the Arabic.

2. A contract is concluded, however, even if acceptance is not immediate, when, during the interval between offer and acceptance, there is nothing to indicate that the offerer has withdrawn his offer and the declaration of acceptance is made before the end of the meeting at which the contract was being framed.

ARTICLE 95 (E.C. 95) AGREEMENT ON ESSENTIAL POINTS ONLY

When the parties have agreed on all the essential points of a contract and have left certain details to be agreed at a later date without stipulating that, failing agreement on these details, the contract shall not be concluded, the contract is deemed to have been concluded, and the points of detail will, in the event of dispute, be decided by the Court according to the nature of the transaction to the provisions of the law and to custom and equity.

ARTICLE 96 (E.C. 96) ACCEPTANCE GOING BEYOND THE OFFER

An acceptance that goes beyond the offer, or that is accompanied by a restriction or modification, is deemed to be a rejection comprising a new offer.

ARTICLE 97 (E.C. 97) CONTRACT BETWEEN PERSONS WHO ARE NOT PRESENT AT THE TIME

1. In the absence of agreement or of a provision of the law to the contrary, a contract between persons who are not present at the time is deemed to have been concluded at the place where and at the time when the offeror became aware of the acceptance.

2. The offeror is deemed to have had knowledge of the acceptance at the place and at the time the acceptance reached him.

ARTICLE 98 (E.C. 98) IMPLIED ACCEPTANCE

1. In a case in which an offeror could not, by reason of the nature of the transaction, in accordance with commercial usage, or on account of other circumstances, have anticipated a formal acceptance, the contract is deemed to have been concluded if the offer is not refused within a reasonable time.

2. Failure to reply is equivalent to acceptance when the offer relates to dealings already existing between the parties, or when the offer is solely in the interests of the offeree.

ARTICLE 99 (E.C. 99) SALES BY AUCTION

A contract of sale by auction is only concluded when the final bid is accepted. A bid is nullified from the moment a higher bid is made, even if the higher bid is void.

ARTICLE 100 (E.C. 100) ACCEPTANCE IN CASE OF A CONTRACT OF ADHESION (17)

Acceptance in the case of a contract of adhesion is confined to adhesion to standard conditions which are drawn up by the offeror and which are not subject to discussion.

(17) A contract of adhesion is one in which one party is required to adhere to standard conditions drawn up by the other party which are not subject to discussion.

ARTICLE 101 (E.C. 101) PREFATORY AGREEMENTS

1. An agreement by which the two parties, or one of them, promise to enter into a particular contract in the future, is only binding if all the essential points of the contract envisaged and the time when the contract should be concluded are stated.

2. When the law provides that a contract shall not be valid unless a certain form is observed, this form must also be observed in any agreement embodying a promise to enter into such a contract.

ARTICLE 102 (E.C. 102) EFFECT OF AGREEMENT TO ENTER INTO CONTRACT

If the party who has promised to enter into a contract refuses to do so and the other party takes legal proceedings against him to enforce the promise and the conditions required for the conclusion of the contract, especially those as to the form, exist, the judgment will, upon becoming final replace the contract.

ARTICLE 103 (E.C. 103) EARNEST MONEY

1. In the absence of a clause to the contrary in the contract, the payment of earnest money at the time of the contract is concluded indicates that either party may withdraw from the contract.

2. The person who has paid the earnest money and withdrawn from the contract forfeits the earnest money, and the person who has received earnest money and withdraws from the contract shall repay double the amount of the earnest money, even if the withdrawal does not cause any prejudice.

ARTICLE 104 (E.C. 104) REPRESENTATION

1. When a contract is entered into by a representative such representative and not the principal will be the person who will be looked to in examining the question of vices of consent (18) or the effects attached to the fact that the contracting party knew or should necessarily have been aware of certain special circumstances.

(18) The vices of consent are mistake, duress and fraud.

2. When, however, the representative is a mandatary who acted in accordance with the principal's precise instructions, the principal cannot plead the ignorance of his representative of circumstances which the principal knew or should necessarily have known.

ARTICLE 105 (E.C. 105) EFFECT OF CONTRACT ENTERED INTO BY REPRESENTATIVES

When a contract is concluded by a representative within the limits of his authority in the name of his principal, the rights and obligations resulting therefrom will be in favour of and binding upon the principal.

ARTICLE 106 (E.C. 106) NON-DISCLOSURE OF QUALITY OF REPRESENTATIVE

When a contracting party did not disclose at the time of the conclusion of a contract that he is acting as a representative, the contract only operates in favour of or binds the principal if the third party with whom the representative contracted should necessarily have known that the contracting party was the representative of the principal, or if it was of no importance to the third party whether he entered into the transaction with the principal or with the representative.

ARTICLE 107 (E.C. 107) IGNORANCE OF EXTINCTION OF REPRESENTATION

If a representative and a third party with whom the representative concluded a contract were both unaware at the time the contract was concluded of the extinction of the representation, the effects of the contract concluded by the representative, whether they involve rights or obligations, revert to the principal or his successor in title (19).

(19) By "khulafa" in the Arabic or "ayants-cause" in the French, translated as "successors in title" is meant persons who, without having consented to a contract either personally or through a representative have succeeded to one of the parties to the contract or to a person who had rights or liabilities under it, or had acquired from another a right under the contract. "ayants-cause a titre universel" (Universal successors in title) are persons who succeed their author in some particular right or acquire some particular right from him (See Walton - Egyptian Law of Obligations, Vol.2., pages 17-18.).

ARTICLE 108 (E.C. 108) PROHIBITION OF REPRESENTATIVE CONTRACTING WITH HIMSELF

Except where otherwise provided by law or by commercial rules, no one may contract with himself in the name of the person he represents, either for his own benefit or for that of a third party, without the authority of his principal, who, nevertheless, in such a case, may ratify the contract.

ARTICLE 109 (E.C. 109) CAPACITY OF PERSON CONTRACTING

Every person who has not been declared to be under total or partial legal incapacity has the legal capacity to conclude a contract.

ARTICLE 110 (E.C. 110) CONTRACTS OF MINOR LACKING DISCRETION (20) VOID

A minor lacking discretion has not the legal capacity to dispose of his property. All his acts in law (21) are deemed to be void.

(20) The code fixes the age of discretion at seven years (see Article 45).

(21) The word "act" in this translation denotes a juridical act or act of law, i.e., an act intended to create, modify, confirm or extinguish a right, such as a lawful disposition of property, giving, borrowing, alienating, transferring.

ARTICLE 111 (E.C. 111) DEALINGS OF A MINOR POSSESSING DISCRETION

1. Contracts and other dispositions of property entered into by a minor possessing discretion are valid when wholly to his advantage and void when wholly to his disadvantage.

2. Dispositions of property which may be, at the same time profitable and detrimental, may be annulled if this is in the interest of the minor. Annulment cannot be claimed if the act is ratified by the minor upon attaining his majority or by his guardian or by the Court, as the case may be, in accordance with the law.

ARTICLE 112 (E.C. 112) DEALINGS OF MINOR OF DISCRETION WHO HAS ATTAINED EIGHTEEN YEARS

A minor possessing discretion who has attained the age of eighteen years and has been authorized to take possession of his property in order to manage it or has taken possession of his property by virtue of law, may validly perform acts of management within the limits of the law.

ARTICLE 113 (E.C. 113) INSANITY, MENTAL DERANGEMENT, IMBECILITY, AND PRODIGALS

The Courts shall pronounce or raise interdictions(22) on all persons suffering from insanity, mental derangement or imbecility, and prodigals, in accordance with the rules and the procedure prescribed by law.

(22) "Interdiction" is an order of the Court depriving a person of the exercise of his civil rights.

ARTICLE 114 (E.C. 114) DEALINGS OF PERSON SUFFERING FROM INSANITY OR MENTAL DERANGEMENT

1. An act entered into by a person suffering from insanity or mental derangement after the registration of the sentence of interdiction is null.

2. An act done before the registration of the sentence of interdiction is null only if the state of insanity or mental derangement was a matter of common notoriety at the time the contract was entered into or if the other party had knowledge thereof.

ARTICLE 115 (E.C. 115) DEALINGS OF A PERSON PLACED UNDER INTERDICTION FOR IMBECILITY OR PRODIGALITY.

1. An act entered into by a person placed under interdiction for imbecility or prodigality after the registration of the sentence of interdiction, will be governed by the provisions regarding acts performed by minors possessing discretion.

2. An act entered into before the registration of the sentence of interdiction shall only be void or voidable if unfair advantage has been taken of the condition of the person under interdiction or if there has been fraudulent collusion.

ARTICLE 116 (E.C. 116) DEALINGS IN WAQF OR WILLS BY PERSONS PLACED UNDER INTERDICTION.

1. The constitution of a waqf or the execution of a will by a person placed under interdiction for prodigality or for imbecility is valid, if the interdicted person has been duly authorized by the Court.

2. Acts of management carried out by a person placed under interdiction for prodigality, who has been authorized to take possession of his property, are valid within the limits provided by law.

ARTICLE 117 (E.C. 117) APPOINTMENT OF JUDICIAL ADVISER.

1. If a person is deaf and dumb, deaf and blind or blind and dumb, and cannot, by reason of his infirmity, express his will, the Court may appoint a judicial adviser to assist him in connection with such acts as may be necessary in his interests.

ARTICLE 118 (E.C. 118) DEALINGS OF NATURAL GUARDIANS, LEGAL GUARDIANS, AND CURATORS

An act by a natural guardian, a legal guardian or a curator is valid within the limits provided by law.

ARTICLE 119 (E.C. 119) RIGHT OF PERSON UNDER LEGAL INCAPACITY TO DEMAND NULLIFICATION OF THE CONTRACT

A person under legal incapacity may demand the nullification of the contract, subject, however, to his liability to payment of damages if he has employed fraudulent methods to conceal his legal incapacity.

ARTICLE 120 (E.C. 120) THE EFFECTS OF ERROR

Where a party to a contract commits a fundamental error, he may apply for nullification of the contract, provided the other party had similarly committed the same error or had been cognizant of it or could have easily discovered it.

ARTICLE 121 (E.C. 121) ESSENTIAL MISTAKE

1. A mistake is an essential mistake when its gravity is of such a degree that, had it not been committed, the party who was mistaken would not have concluded the contract.

2. The mistake is deemed to be essential more particularly;
(a) when it has a bearing on the quality of the thing which the parties have considered essential or which must be deemed essential, taking into consideration the circumstances surrounding the contract and the good faith that should prevail in business relationships.
(b) when it has a bearing on the identity or on one of the qualities of the person with whom the contract is entered into, if this identity or this quality was the principal factor in the conclusion of the contract.

ARTICLE 122 (E.C. 122) MISTAKE IN LAW

In the absence of a provision of the law to the contrary, a mistake in law entails the nullification of the contract, if the mistake fulfils the elements of a mistake in fact in accordance with the two preceding Articles.

ARTICLE 123 (E.C. 123) MISTAKES IN CALCULATION AND CLERICAL MISTAKES

Mere mistakes of calculation or clerical mistakes do not affect the validity of the contract; these errors must, however, be corrected.

ARTICLE 124 (E.C. 124) MISTAKE AND GOOD FAITH

1. A party who has committed a mistake cannot take advantage of the mistake in a manner contrary to the principles of good faith.

2. Such a party, moreover, remains bound by the contract which he intended to conclude, if the other party shows that he is prepared to perform the contract.

ARTICLE 125 (E.C. 125) CONTRACT DECLARED VOID ON GROUNDS OF FRAUDULENT MISREPRESENTATION

1. A contract may be declared void on the grounds of fraudulent misrepresentation when the artifices practised by one of the parties, or by his representative, are of such gravity that, but for them, the other party would not have concluded the contract.

2. Intentional silence on the part of one of the parties as to a fact or as to the accompanying circumstances constitutes fraudulent misrepresentation if it can be shown that the contract would not have been concluded by the other party had he had knowledge thereof.

ARTICLE 126 (E.C. 126) FRAUDULENT MISREPRESENTATION BY A THIRD PARTY

A party who is the victim of fraudulent misrepresentation by a third party can only demand the avoidance of the contract if it is established that the other contracting party was aware of, or should have been aware of, the fraudulent misrepresentation.

ARTICLE 127 (E.C. 127) DURESS

1. A contract is voidable as a result of duress if one of the parties has contracted under the stress of justifiable fear unlawfully instilled in him by the other party.

2. Fear is deemed to be justified when the party who invokes it has been led to believe, in view of the circumstances, that a serious and imminent danger to life, limb, honour or property threatened him or others.

3. In appreciating the extent of duress, the sex, age, social position and the condition of health of the victim should be taken into consideration, as well as any other circumstance that might have aggravated the duress.

ARTICLE 128 (E.C.128) DURESS BY A THIRD PARTY

When the duress is practised by a person other than one of the contracting parties the victim cannot demand the nullification of the contract, unless it is established that the other contracting party had, or should necessarily have had, knowledge thereof.

ARTICLE 129 (E.C.129) ANNULMENT OR AMENDMENT OF THE CONTRACT

1. If the obligations of one of the contracting parties are out of all proportion to the advantages that he obtains from the contract or to the obligations of the other contracting party and it is established that the party who has suffered prejudice entered into the contract only as a result of the other party exploiting his obvious levity of character or his unbridled passion, the Judge may, at the request of the party so prejudiced, annul the contract or reduce the obligations of such party.

2. Proceedings instituted on such grounds shall be barred unless commenced within one year from the date of the contract.

3. In a contract entered into for valuable consideration the other party may avoid annulment proceedings by making such an offer as the Judge may consider adequate compensation to cover the lesion (23).

(23) "Lesion" is the inadequacy in the price for a sale, or extortionate price in a purchase, or the giving to a minor of a smaller portion in value than the other heirs.

ARTICLE 130 (E.C.130) SPECIAL PROVISIONS

The preceding Article shall apply subject to special provisions of the law relating to lesion in certain contracts and to the provision of the law as regards rates of interest.

Object

ARTICLE 131 (E.C.131) THINGS THAT MAY HAPPEN IN THE FUTURE

1. Things that may happen in the future may be the object of an obligation.

2. An agreement with regard to the succession (24) of a living person is void, even if he consents to such an agreement, except in cases provided for by law.

(24) A succession is the transference of property and debts of a deceased person to one or more living persons who take the place of the deceased by law. The persons to whom the succession is transferred are called heirs.

ARTICLE 132 (E.C.132) IMPOSSIBILITY OF OBJECT OF OBLIGATION

If the object of an obligation is something impossible in itself the contract is void.

ARTICLE 133 (E.C. 133) DETERMINATION OF OBJECT OF OBLIGATION

1. When the object of an obligation is not certain as to its nature it must at least be determinate as to its kind and quantity, as otherwise the contract is void.

2. The object of an obligation may, however, only be determinate as to kind, if the contract provides a method of ascertaining the quantity. If there is no agreement as to the degree of quality and the quality cannot be ascertained by usage or by any other circumstances, the debtor must supply an article of average quality. (25).

(25) "Creditor" and "Debtor" mean not only a person entitled to be paid a sum of money or a person who owes a sum of money but the person who is entitled to call upon another to fulfil an obligation and a person who owes the duty of fulfilling the obligation respectively.

ARTICLE 134 (E.C. 134) MONEY OBLIGATIONS

When the object of an obligation is a sum of money, the debtor is bound only to the extent of the actual figure of the sum of money stated in the contract, whatever be the increase or decrease in the value of such money at the date of payment.

ARTICLE 135 (E.C. 135) CONTRACTS CONTRARY TO PUBLIC POLICY OR MORALITY

A contract is void if its object is contrary to public policy or morality.

Consideration

ARTICLE 136 (Variation of Article 136 of E.C.) ASSUMPTION OF OBLIGATION OF UNLAWFUL CONSIDERATION

The contract is void if an obligation is assumed for an unlawful consideration.

ARTICLE 137 (E.C. 137) OBLIGATION DEEMED TO HAVE LAWFUL CONSIDERATION

1. An obligation is deemed to have unlawful consideration, even if such consideration is not expressed in the contract, unless the contrary is proved.

2. The consideration expressed in the contract is deemed to be the true consideration until evidence to the contrary is produced. Upon evidence being produced that the consideration is feigned, the onus falls on the person who maintains that the obligation has another lawful consideration of proving his contention.

Nullity

ARTICLE 138 (E.C. 138) RIGHT TO PROCURE NULLIFICATION OF CONTRACT

When the law recognises the right of one of the contracting parties to procure the nullification of the contract the other party cannot avail himself of the right (26).

(26) A person capable of binding himself, for example, cannot plead the legal incapacity of the minor with whom he treated.

ARTICLE 139 (E.C. 139) EXTINCTION OF RIGHT OF NULLIFICATION

1. The right to procure nullification of the contract is extinguished by an express or implied ratification of the contract.

2. Ratification is retroactive to the date of the contract without prejudice to the rights of third parties.

ARTICLE 140 (E.C. 140) RIGHT OF NULLIFICATION PRESCRIBED

1. The right to procure nullification of a contract is prescribed if not invoked within three years.

2. This period runs, in case of legal incapacity, from the date of the cessation of such incapacity; in the case of mistake or fraudulent misrepresentation from the date the mistake or misrepresentation is discovered; in the case of duress from the date it has ceased. In no case can nullification be claimed as a result of mistake, fraudulent misrepresentation, or duress when fifteen years have elapsed from the date of the conclusion of the contract.

ARTICLE 141 (E.C. 141) INVOCATION OF NULLITY

1. When a contract is void its nullity may be invoked by every person having an interest in the contract and such nullity may also be ordered by the Court on its own initiative. Nullity cannot disappear by ratification of the contract.

2. Nullity proceedings are prescribed after fifteen years from the date of the conclusion of the contract.

ARTICLE 142 (E.C. 142) EFFECT OF ANNULMENT OF CONTRACT

1. When a contract is void or annulled the parties are reinstated in their position prior to the contract. If such reinstatement is impossible damages equivalent to the loss may be awarded.

2. When, however, a contract concluded by a person without legal capacity (27) is annulled by reason of his lack of legal capacity he shall only be liable to refund such profits as he derived from the performance of the contract.

(27) See note to Article 6.

ARTICLE 143 (E.C. 143) CONTRACT VOID OR VOIDABLE IN PART

When part of a contract is void or voidable, that part alone will be annulled, unless it is established that the contract would not have been entered into without such a part, in which case the contract will be void as a whole.

ARTICLE 144 (E.C. 144) SUBSTITUTION OF ANOTHER CONTRACT FOR A VOID OR VOIDABLE CONTRACT

When a void or voidable contract contains the elements of another contract, the contract will be deemed to be valid to the extent of the other contract if it appears that the parties intended to conclude such another contract.

Effects of a Contract

ARTICLE 145 (E.C. 145) EFFECTS OF THE CONTRACT WITH RESPECT TO PERSONS

Subject to the rules relating to successions, the effects of a contract apply to the parties and to their universal successors in title, unless it follows from the contract, from the nature of the transaction or from a provision of the law, that the effects of the contract do not pass to the universal successors in title of a party (28).

(28) Compare Quebec Civil Code, Article 1028, as follows: "A person cannot, by a contract in his own name, bind anyone but himself and his heirs and legal representatives."

ARTICLE 146 (E.C. 146) EFFECTS OF A CONTRACT IN RESPECT OF PARTICULAR SUCCESSORS IN TITLE

Obligations and personal rights created by contracts relating to property that has subsequently been transferred to particular successors in title are transferred to such particular successors in title together with the property, when such obligations and rights constitute essential elements of the property and the particular successors in title had knowledge at the time of the transfer of the property to them.

ARTICLE 147 (E.C. 147) CONTRACT MAKES THE LAW OF THE PARTIES

1. The contract makes the law of the parties. It can be revoked or altered only by mutual consent of the parties or for reasons provided for by the law.

2. When, however, as a result of exceptional and unpredictable events of a general character, the performance of the contractual obligation, without becoming impossible, becomes excessively onerous in such way as to threaten the debtor with exorbitant loss, the Judge may, according to the circumstances, and after taking into consideration the interests of both parties, reduce to reasonable limits the obligation that has become excessive. Any agreement to the contrary is void.

ARTICLE 148 (E.C. 148) PERFORMANCE OF THE CONTRACT

1. A contract must be performed in accordance with its contents and in compliance with the requirements of good faith.

2. A contract binds the contracting party not only as regards its expressed conditions, but also as regards everything which, according to law, usage, and equity, is deemed, in view of the nature of the obligation, to be a necessary sequel to the contract.

ARTICLE 149 (E.C. 149) LEONINE CONDITIONS IN CONTRACT OF ADHESION (29)

When a contract of adhesion contains leonine conditions, the Judge may modify these conditions or relieve the adhering party of the obligation to perform these conditions in accordance with the principles of equity. Any agreement to the contrary is void.

(29) See note to Article 100.

ARTICLE 150 GENERAL STIPULATIONS IMPOSED BY ONE PARTY

General stipulations imposed by one party are valid as against the other party if known by the latter at the time when the contract was entered into or if he might have known thereof by using ordinary diligence.

In all cases, unless specifically approved in writing, the (following) conditions shall have no effect: conditions limiting the liability of the party who inserted them, conditions affecting power to withdraw from the contract or to suspend the execution thereof, if they are in favour of the party inserting them, or conditions providing for the time limits for the other contracting party or limitations to such party's power to raise defences,. restrictions to the freedom of contracts with respect to third parties, tacit extension or renewal of the contract, and conditions relating to possession or restricting the jurisdiction of the Judiciary.

ARTICLE 151 CONTRACTS ENTERED INTO UPON PREPARED FORMS

In contracts entered into upon forms prepared for the purpose of regulating contractual relationships, clauses added to such forms prevail over the original clauses therein, even if they are contradictory and even though the original clauses have not been deleted.

ARTICLE 152 (E.C. 150) CONSTRUCTION OF CONTRACT

1. When the wording of a contract is clear it cannot be deviated from in order to ascertain by means of interpretation the intention of the parties.

2. When a contract has to be construed it is necessary to ascertain the common intention of the parties and to go beyond the literal meaning of the words, taking into account the nature of the transaction as well as that loyalty and confidence which should exist between the parties in accordance with commercial usage.

ARTICLE 153 (E.C. 151) CONSTRUCTION IN CASE OF DOUBT

1. In cases of doubt the construction shall be in favour of the debtor.

2. The construction, however, of obscure clauses in a contract of adhesion must not be detrimental to the adhering party.

ARTICLE 154 (E.C. 152) EFFECT OF CONTRACT IN RELATION TO THIRD PARTIES

A contract does not create obligations binding upon third parties, but may create rights in their favour.

ARTICLE 155 (E.C. 153) CONTRACT TO PROCURE PERFORMANCE OF AN OBLIGATION BY A THIRD PARTY

1. A person who binds himself to procure the performance of an obligation by a third party does not in so doing bind the third party. If the third party refuses to perform the obligation the person who bound himself to obtain such performance will be liable to indemnify the other contracting party by himself performing the obligation, the performance of which he undertook to procure.

2. In the event of the third party consenting to perform the obligation his consent is effective only from the time that it is given, unless it is indicated expressly or by implication that the consent is retroactive as from the date of the agreement between the contracting parties.

ARTICLE 156 (E.C. 154) CONTRACT FOR THE BENEFIT OF A THIRD PERSON

1. A person may by a contract in his own name stipulate that an obligation shall be performed for the benefit of a third party, when he has a personal interest, material or moral, in the performance of such an obligation. (30)

(30) The most usual application of stipulations pour autrui are life insurance policies entered into in favour of third parties, and accident-insurance policies entered into by an employer for the benefit of his workmen. Another application is a contract made by a Government Department containing stipulations for the benefit of third parties. When, for instance a Municipality invites tenders for the construction of public works, it frequently inserts in the contract conditions for the benefit of the workmen to be employed, such as minimum wages, or that working hours shall not exceed a certain number per day.

2. As a result of such a stipulation and in the absence of an agreement to the contrary the third party beneficiary acquires a direct right against the person who undertook to perform the obligation and may call upon him to do so. The person who gave the undertaking may set up against the beneficiary the defences arising out of the contract.

3. The stipulator may also demand the performance of the obligation in favour of the beneficiary, unless it appears from the contract that performance may only be demanded by the beneficiary.

ARTICLE 157 (E.C. 155) REVOCATION OF STIPULATION FOR THIRD PARTY

1. The stipulator himself, but not his creditors or heirs, may revoke the stipulation for a third party, provided that the revocation is made before the beneficiary advises the debtor of the stipulator of his wish to have the benefit of the stipulation, and that the revocation is not contrary to the spirit of the contract.

2. In the absence of any express or implied agreement to the contrary, the revocation does not liberate the debtor vis-a-vis the stipulator. The stipulator may substitute a new beneficiary in the place of the former beneficiary, or may retain for himself the benefit of the stipulation.

ARTICLE 158 (E.C. 156) STIPULATIONS IN FAVOUR OF THIRD PARTIES WHO MAY BE FUTURE PERSONS OR INSTITUTIONS

A stipulation in favour of a third party may be made in favour of future persons or institutions, and also in favour of persons or institutions who are not identified at the date of the contract, provided that these persons or institutions can be identified at the date when the effects of the contract come into operation in accordance with the stipulation.

Dissolution of a Contract

ARTICLE 159 (E.C.157) DISSOLUTION OF BI-LATERAL CONTRACTS (31)

1. In bi-lateral contracts (contrats synallagmatiques) if one of the parties does not perform his obligation the other party may, after serving a formal summons on the debtor, demand the performance of the contract or its rescission, with damages, if due, in either case.

(31) Bi-lateral contracts are contracts which engender at the same time two principal and correlative obligations: such contracts are sale, exchange, lease, partnership and others.

2. The Judge may grant additional time to the debtor if it is necessary as a result of the circumstances. The Judge may also reject an application for rescission when the part of the contract which the debtor has failed to perform is of little importance in comparison with the obligation in its entirety.

ARTICLE 160 (E.C. 158) RESCISSION OF CONTRACT IPSO FACTO IN CASE OF NON-PERFORMANCE

The parties may agree that in case of non-performance of the obligations flowing from the contract the contract will be deemed to have been rescinded ipso facto without a Court order. Such an agreement does not release the parties from the obligation of serving a formal summons (32), unless the parties expressly agree that such a summons will be dispensed with.

(32) A formal summons (mise en demeure) is a written demand, which may either be prepared by a lawyer or the party himself, but which must be served on the other side by a public officer, i.e., the usher or bailiff of the Court. Such service is an extrajudicial proceeding.

ARTICLE 161 (E.C. 159) OBLIGATION OF BI-LATERAL CONTRACT EXTINGUISHED BY IMPOSSIBILITY OF PERFORMANCE

When an obligation arising out of a bi-lateral contract is extinguished by reason of impossibility of performance correlative obligations are also extinguished and the contract is rescinded ipso facto.

ARTICLE 162 (E.C. 160) EFFECT OF RESCISSION OF CONTRACT

When a contract is rescinded the parties are reinstated in their former position. If reinstatement is impossible the Court may award damages.

ARTICLE 163 (E.C. 161) RIGHT TO ABSTAIN FROM PERFORMANCE OF BI-LATERAL CONTRACT

When, in the case of a bi-lateral contract, correlative obligations are due for performance, either of the contracting parties may abstain from the performance of his obligation if the other party does not perform his obligation.

Section II
Unilateral Undertakings

ARTICLE 164 (E.C. 162) PROMISE TO PUBLIC FOR REWARD FOR SPECIFIED SERVICE

1. A person who makes a promise to the public of a reward in exchange for a specified service is bound to pay the reward to the person who performs the service, even if he acted without thought of the promise of reward, or without knowledge thereof.

2. When the person who made the promise does not fix a period of time for the performance of the service, he may withdraw his promise by means of a notice to the public, but such withdrawal will not effect the rights of a person who has already performed the service. The right of action for the reward will be forfeited if such action is not lodged within six months from the date of the publication of the notice of withdrawal.

ARTICLE 165 PROVISIONS RELATING TO UNILATERAL UNDERTAKINGS

1. If the law enacts that unilateral undertakings may give rise to an obligation then the provisions of the law as to contract shall apply thereto save where those provisions require a plurality of intention or the undertaking conflicts with the text of the law.

2. The provisions of law as to contract shall apply generally to unilateral undertakings in so far as they are legal dealings giving rise to effects other than the creation of an obligation.

Section III
Unlawful Acts

1. Liability Arising from Personal Acts

ARTICLE 166 (E.C. 163) GENERAL RULES

Every fault which causes injury to another imposes an obligation to make reparation upon the person by whom it is committed.

ARTICLE 167 (E.C. 164) RESPONSIBILITY FOR UNLAWFUL ACTS

1. Every person in possession of discretion is responsible for his unlawful acts.

2. When an injury is caused by a person not in possession of discretion the Judge may, if no one is responsible for him, or if the victim of the injury cannot obtain reparation from the person responsible, condemn the person causing the injury to pay equitable damages, taking into account the position of the parties.

ARTICLE 168 (E.C.165) INJURY RESULTING FROM CAUSE BEYOND CONTROL

In the absence of a provision of the law or an agreement to the contrary, a person is not liable to make reparation if he proves that the injury resulted from a cause beyond his control, such as unforeseen circumstances, force majeure, the fault of the victim or of a third party.

ARTICLE 169 (E.C.166) LAWFUL DEFENCE

A person who causes an injury to another in legitimate defence of his person or property, or of the person or property of a third party, is not responsible, provided that he does not exceed the measures necessary for his defence, as otherwise he will be liable to damages assessed in accordance with the principles of equity.

ARTICLE 170 (E.C. 167) PUBLIC OFFICIAL

A public official is not responsible for an act by which he causes injury to another person if he acted in pursuance of an order received from a superior, which order he had to obey or thought he had to obey, and if he shows that he believed that the act performed was lawful, that he had reasonable grounds for such belief and that he acted with care.

ARTICLE 171 (E.C. 168) NECESSITY

A person who causes injury to another person in order to avoid greater injury that threatens him or a third party, is only responsible for such damages as the Judge deems equitable.

ARTICLE 172 (E.C. 169) JOINT AND SEVERAL RESPONSIBILITY

When several persons are responsible for an injury they are jointly and severally responsible to make reparation for the injury. The liability will be shared equally between them, unless the Judge fixes their individual share in the damages due.

ARTICLE 173 (E.C. 170) DAMAGES

The Judge shall decide, in accordance with the provisions of Articles 224 and 225 and in the light of the circumstances, the extent of the damages for the loss suffered by the victim. If the Judge is not in a position at the time of the judgment to fix definitely the extent of the injury he may allow the victim a delay within which he may claim reassessment of the damages.

ARTICLE 174 (E.C.171) METHOD OF PAYMENT OF DAMAGES

1. The Judge shall decide the method of payment of damages in accordance with the circumstances. The damages may be paid by instalments, or in the form of a regular periodical payment, in either of which cases the debtor may be ordered to provide security.

2. Damages will consist of a money payment. Upon the demand of the victim, however, the Judge may, in accordance with the circumstances, order that the damage be made good by the restoration of the original position, or by the performance of a prestation that has a connection with the unlawful act.

ARTICLE 175 (E.C. 172) PRESCRIPTION

1. An action for damages arising from an unlawful act is prescribed after three years from the date upon which the victim knew of the injury and the identity of the person who was responsible. An action for damages is prescribed in any case after fifteen years from the date on which the unlawful act was committed.

2. When a claim arises out of a penal offence and the penal action is not prescribed after the delays set out in the preceding paragraph, the action for damages is only prescribed when the penal action itself is prescribed.

2. Liability Arising from the Acts of Another

ARTICLE 176 (E.C. 173) RESPONSIBILITY OF SUPERVISOR

1. A person who is, by law or by agreement, entrusted with the supervision of a person who, on account of his minority or his mental or physical condition, requires supervision, is liable for damages for injuries caused to a third party by unlawful acts of the person under his supervision. The responsibility exists even when the person causing the injury is a person who is deprived of discretion.

2. A minor is deemed to require supervision until he has attained fifteen years or if, having attained that age, he is under the care of a person in charge of his upbringing. The supervision of a minor is the responsibility of his schoolmaster or of the person under whose supervision he works during the time he is under the care of such master or of such person under whom he works. The supervision of a wife who is a minor is the responsibility of her husband or of the person who is responsible for the supervision of the husband.

3. A person who is entrusted with the supervision of another person may escape liability by proving that he performed his duty of supervision or that the injury could not have been prevented, even if he had exercised the necessary care.

ARTICLE 177 (E.C. 174) RESPONSIBILITY OF MASTER (33)

1. A master is liable for the damage caused by an unlawful act of his servant (34), when the act was performed by the servant in the course, or as a result of his employment.

2. The relationship between master and servant exists even when the master has not been free to choose his servant, provided he has actual powers of supervision and control over his servant.

(33) The word master in this Article is used to denote a person who entrusts another with the management of his affairs.

(34) The word servant is used to denote the person entrusted with the management of the master's affairs.

ARTICLE 178 (E.C. 175) CLAIM FOR REDRESS

A person responsible for an act of another person has a claim for redress against that other person to the extent that the other person is responsible for the reparation of the injury.

3. Liability Arising from Things

ARTICLE 179 (E.C. 176) LIABILITY ARISING FROM ANIMALS

A person in charge of an animal, even if he is not its owner, is liable for any harm done by the animal, even if the animal strays or escapes, unless such person shows that the accident was due to a cause beyond his control.

ARTICLE 180 (E.C. 177) DAMAGE RESULTING FROM COLLAPSE OF BUILDINGS

1. A person in charge of a building, even if he is not its owner, is liable for damage caused by

the collapse of the building, even if such collapse is only partial, unless he shows that the accident did not occur as a result of negligent maintenance or the age of or a defect in the building.

2. A person who is in danger of damage from a building is entitled to call on the owner to take the necessary precautions to prevent the danger, and if the owner fails to take such precautions, to obtain an order from the Court authorizing him to take the necessary precautions himself at the cost of the owner.

ARTICLE 181 (E.C. 178) LIABILITY ARISING FROM SUPERVISION OF THINGS

Whoever is in charge of a thing whose supervision requires special care, or of a machine, is liable for damage caused by it, unless he shows that the damage was due to a cause beyond his control, subject always to any special provisions of the law in this respect.

Section IV
Enrichment Without Just Cause

ARTICLE 182 (E.C. 179) DEFINITION

A person, even one lacking discretion, who without just cause enriches himself to the detriment of another person, is liable, to the extent of his profit, to compensate such other person for the loss sustained by him. This obligation remains, even if the profit has disappeared at a later date.

ARTICLE 183 (E.C. 180) PRESCRIPTION

A claim for compensation for enrichment without just cause is prescribed after three years from the date on which the injured person knew of his right to be compensated and in any case after fifteen years from the date that the right arose.

1. Payment not Due

ARTICLE 184 (E.C. 181) PAYMENT NOT DUE

1. Whoever receives, by way of payment, that which is not owing to him, is bound to return it.

2. There is, however, no obligation to restitute when the payer knew that he was not under an obligation to pay, unless he was legally incapable or unless he paid under duress.

ARTICLE 185 (E.C. 182) RECOVERY OF PAYMENT NOT DUE

A payment which was not due may be recovered, if it was made in the performance of an obligation whose cause had not materialized or had ceased to exist.

ARTICLE 186 (E.C. 183) FULFILMENT OF OBLIGATION WHICH AT THE TIME HAD NOT FALLEN DUE

1. Restitution may also be made of a payment effected in the performance of an obligation which had not at the time fallen due, if the payer was not aware that payment was not then due.

2. A creditor may, however, limit the restitution to the profit he has gained as a result of the premature payment to the extent of the loss suffered by the debtor. When the obligation which has not fallen due is for a sum of money, the creditor must restitute to the debtor interest thereon at the legal or at an agreed rate for the time to run until the due date of payment.

ARTICLE 187 (E.C. 184) PAYMENT BY OTHER THAN THE DEBTOR

Restitution is not due of a payment effected by a person other than the debtor if the creditor, acting in good faith, has in consequence of such payment given up his document of title, or his security or allowed his claim against the real debtor to be prescribed. The real debtor must in such a case indemnify the third party who made the payment.

ARTICLE 188 (E.C. 185) LIMITS OF RESTITUTION

1. When a person has received in good faith that which is not due to him he is bound only to restitute that which he has received.

2. If he has received in bad faith he is bound to restitute in addition the interest and profit that he has gained or that he has failed to gain by neglect on the thing unduly received, from the date of payment or from the date he became of bad faith.

3. In any case, a person who has received that which is not due to him is bound to restitute the interest and profit thereon from the date of a claim in the Courts.

ARTICLE 189 (E.C. 186) WANT OF LEGAL CAPACITY IN HIM WHO RECEIVES PAYMENT NOT DUE

When a person who has received that which was not due to him has not the legal capacity to enter into a contract he is bound only to the extent of his profit.

ARTICLE 190 (E.C. 187) PRESCRIPTION

A claim for restitution of a payment unduly received is prescribed after three years from the day on which the payer knew of his right to claim restitution and in any case after fifteen years from the date upon which the right arose.

2. Voluntary Agency (35)

(35) Voluntary Agency (Negotiorum gestio or gestion d'affaires).
There is a voluntary agency when a person of his own accord assumes the management of another person's business without the knowledge of the latter. The person who manages the business is called the voluntary agent, i.e., "gerant d'affaires", of the person whose business has been managed, i.e., dominus rei, the "maitre de l'affaires". There must be a union of four conditions: (1) the voluntary agent must not have received a mandate either expressly or tacitly; (2) the act of management must have reference to the actual patrimonium of the other person; (3) there must be intention on the part of the voluntary agent to manage the business of another; (4) the voluntary agent must be capable of binding himself. The act of management must be an act of management properly so-called, e.g., the repair of a wall, a roof or the like.

ARTICLE 191 (E.C. 188) DEFINITION OF VOLUNTARY AGENCY

There is a voluntary agency when one person of his own accord knowingly assumes the management of an urgent business of another person and on that person's behalf without being bound to do so.

ARTICLE 192 (E.C. 189) ASSOCIATION OF INTEREST IN VOLUNTARY AGENCY

Voluntary agency also exists even when a voluntary agent manages the affairs of another person whilst at the same time looking after his own business, because of a connection between the two businesses of such a kind that one of them cannot be managed separately from the other.

ARTICLE 193 (E.C. 190) RULES TO BE APPLIED UPON RATIFICATION OF VOLUNTARY AGENCY

The rules of mandate apply if the person for whom the voluntary agent acts ratifies his act.

ARTICLE 194 (E.C. 191) DUTY TO CONTINUE WORK

A voluntary agent must continue work he has commenced until the person for whom he acts is in a position to do so himself. He must also, as soon as he is able to do so, inform the person for whom he acts of his intervention.

ARTICLE 195 (E.C. 192) DUTIES OF VOLUNTARY AGENT

1. A voluntary agent must use in the management of the work he has undertaken all the care that one would expect from a reasonable person (36) and shall be responsible for his mistakes. The Judge may, however, reduce the amount of damages due as a result of such mistakes, if circumstances justify such a reduction.

(80) The words "reasonable person" have been used to translate the Arabic words "shakhs adi" which literally means "normal person" as the Egyptian legislator used these two words to convey the expression "bon pere de famille" originally used in the Napoleonic Code to describe the sensible man managing his own affairs, having ordinary knowledge and taking ordinary care.

2. When a voluntary agent delegates to a third party the whole or part of the work of which he has assumed the management he shall be responsible for the acts of his delegate, without prejudice to the right of the person for whom he acts to his direct remedy against the delegate.

3. When there are several voluntary agents doing the same work they are all jointly and severally responsible.

ARTICLE 186 (E.C. 193) OBLIGATION OF VOLUNTARY AGENT TO RETURN WHAT HE RECEIVED AND TO RENDER ACCOUNTS

A voluntary agent is bound by the same obligations as a mandatary as regards the restitution of that which he received as a result of his management and as regards rendering accounts thereof.

ARTICLE 187 (E.C. 194) DEATH OF VOLUNTARY AGENT OR OF THE PERSON FOR WHOM HE ACTS

1. In the event of the death of a voluntary agent his heirs are bound by the same obligation as those of a mandatary in accordance with the provisions of Article 717 paragraph 2.

2. In the event of the death of the person for whom he acts the voluntary agent is bound by the same obligations to the heirs as he was to the person of whom they were the successors in title.

ARTICLE 188 (E.C. 195) OBLIGATIONS OF PERSON FOR WHOM VOLUNTARY AGENT WORKS

A voluntary agent is deemed to be the representative of the person for whom he has acted, if he has devoted to the management of the work the care of a reasonable person, even if the object in view has not been achieved. The person for whom the voluntary agent has acted will be bound to carry out the obligations entered into on his behalf by the voluntary agent, to indemnify him against all undertakings assumed by him, to reimburse him monies usefully or necessarily expended by him which are justified by the circumstances together with interest thereon from the date of expenditure, and to indemnify him in respect of any loss he has suffered as a result of his management. The voluntary agent is not entitled to any remuneration for his work, unless the work comes within the scope of his professional business.

ARTICLE 189 (E.C. 196) LEGAL CAPACITY OF VOLUNTARY AGENT TO ENTER INTO CONTRACT

1. If a voluntary agent is not legally capable of entering into contracts he will only be responsible for his management to the extent of his profit therefrom, provided that his liability does not result from an unlawful act.

2. The person for whom the voluntary agent acts remains, however, fully responsible, even if he himself is legally incapable of entering into a contract.

ARTICLE 190 (E.C. 197) PRESCRIPTION

A claim arising from voluntary agency is prescribed after three years from the day that each party had knowledge of his right and in any case after fifteen years from the day on which the right arose.

Section V
The Law

ARTICLE 201 (E.C.198) OBLIGATIONS ARISING IN CONSEQUENCE OF THE LAW

Obligations which arise directly and solely in consequence of the law are governed by the provisions of the law giving rise to such obligations (37).

(37) Compare Article 1057 of the Quebec Civil Code as follows:
"Obligations result in certain cases from the sole and direct operation of law, without the intervention of any act and independently of the will of the person obliged or of him in whose favour obligation is imposed. Such are the obligations of tutors and the other administrators who cannot refuse the charge cast upon them."

Chapter II
The Effects of Obligations

ARTICLE 202 (E.C.199) PERFORMANCE OF OBLIGATIONS

1. An obligation is enforceable against the debtor.
2. The performance of a natural obligation (38), however, cannot be enforced.

(38) Natural Obligations are duties which, although they are legal in their nature in the sense that they are per se capable of being enforced, are, however, duties in respect of which the law gives no right of action. There must be a legal link between the persons, but a link which the law refuses to recognise, for example, a contract informal for not complying with some formality required by law, viz., contracts of women or infants entered into without the approval of husband or guardian, as the case may be, a right barred by prescription, legacies left by a will irregular in form.

ARTICLE 203 (E.C. 200) NATURAL OBLIGATIONS

The Judge shall decide, in the absence of any provision of the law, whether a natural obligation exists. There cannot ever be a natural obligation that is contrary to public policy.

ARTICLE 204 (E.C. 201) DISCHARGE OF NATURAL OBLIGATION

A debtor cannot claim restitution of that which he has voluntarily given to another with the object of discharging a natural obligation.

ARTICLE 205 (E.C. 202) QUALITY OF NATURAL OBLIGATION

A natural obligation may constitute a valid cause for a civil obligation.

Section I
Specific Performance

ARTICLE 206 (E.C.203) SPECIFIC PERFORMANCE OF OBLIGATIONS (39)

1. A debtor shall be compelled, upon being summoned to do so in accordance with Articles 222 and 223, specifically to perform his obligations, if such performance is possible.

2. When, however, specific performance is too onerous for the debtor, he may limit performance to payment of a sum of money as indemnity, provided that this method of performance does not seriously prejudice the creditor.

(39) Specific Performance consists in doing the very thing which the debtor has promised in the contract (Walton II, P.232).

ARTICLE 207 (E.C. 204) TRANSFER OF OWNERSHIP

Subject to the rules with regard to transcription, an obligation to transfer ownership or any other real right transfers ipso facto that right, if the object of the obligation is specifically identified and is owned by the debtor (40).

> (40) "Real Rights" are rights which have for their object things of the outside world, land, houses, movable objects, giving to their possessor a direct and immediate power over these things, the extent of which power varies according to the rights themselves (cf. "jus in re"). Colin and Capitant, "Droit Civil Francais", 123.

ARTICLE 208 (E.C. 205) OBLIGATION TO TRANSFER REAL RIGHT HAVING AS ITS OBJECT THING NOT SPECIFICALLY DESCRIBED

1. When an obligation to transfer a real right has for its object a thing which is described only as regards species, the right is not transferred, unless the object is identified as regards its individuality.

2. If, however, the debtor does not perform his obligation, the creditor may, upon an order of the judge, or in case of urgency even without such an order, acquire, at the expense of the debtor, an article of the same kind; he may also claim the value of the articles without prejudice to his rights to damages, in either case.

ARTICLE 209 (E.C. 206) TRANSFER TO REAL RIGHT AND PRESERVATION THEREOF

An obligation to transfer a real right includes that of the delivery of the article and of the preservation thereof up to time of delivery.

ARTICLE 210 (E.C. 207) DESTRUCTION OF THING BEFORE DELIVERY

1. When a debtor is under an obligation to transfer a real right or to do something which comprises an obligation to deliver a thing, he will be responsible, should he fail to deliver the thing after having been formally summoned to do so, for the loss thereof, even if the risk or loss prior to the issue of the summons was the liability of the creditor.

2. The risk of loss, however, does not pass to the debtor, even upon the issue of a formal summons, if he establishes that the thing would also have perished in the keeping of the creditor if it had been delivered to him, unless the debtor has accepted to take accidental loss at his own risk.

3. The risk of loss of a stolen thing, no matter how the thing perishes or is lost, is the responsibility of the thief.

ARTICLE 211 (E.C. 208) PERSONAL PERFORMANCE

When the contract or the nature of the obligation demands that the obligation to do something shall be performed by the debtor personally, the creditor may refuse the performance of the obligation by any person other than the debtor.

ARTICLE 212 (E.C. 209) PERFORMANCE AT EXPENSE OF DEBTOR

1. In the case of non-performance by the debtor of an obligation to do something, the creditor may apply to the Court for an order to carry out the obligation at the cost of the debtor, if this is possible.

2. In a case of urgency, the creditor may carry out the obligation at the cost of the debtor without an order from the Court.

ARTICLE 213 (E.C. 210) JUDGMENT TAKES PLACE OF PERFORMANCE

When the nature of the obligation so permits, a Judgment may, in case of an obligation to do something, take the place of the performance of the contract (41).

> (41) A judgment takes the place of performance if, for example, when a man has promised to sell property but has not executed a deed of sale, the Judgment orders him to execute the deed and declares that in default of his so doing the Judgment itself will be held to be equivalent to the deed of sale (Walton II, p. 235).

ARTICLE 214 (E.C. 211) CONDITION THAT REASONABLE CARE OF THING BE EXERCISED

1. Subject always to any provision of the law or agreement to the contrary in the case of an obligation to do something, a debtor who is required to preserve a thing, to manage it to act with prudence in the performance of his obligation, satisfies his obligation if he brings to the performance thereof the care of a reasonable person, even if the object in view is not achieved.

2. The debtor always remains liable for fraud or gross negligence.

ARTICLE 215 (E.C. 212) BREACH OF OBLIGATION TO REFRAIN FROM DOING SOMETHING

1. When the specific performance of an obligation is impossible or not practicable, unless performed by the debtor himself, the creditor may obtain a Judgment ordering the debtor to perform the obligation and to pay a penalty if he abstains from performing his obligation.

2. If the Judge finds that the amount of the penalty is insufficient to make the debtor perform his obligation he may increase the penalty each time that he considers it is desirable to do so.

ARTICLE 217 (E.C. 214) DAMAGES

After specific performance has been carried out or when a debtor has persisted in his refusal to perform the obligation the Judge shall fix the amount of damages that the debtor shall pay, taking into account the prejudice suffered by the creditor and the unjustifiable attitude of the debtor.

Section II
Compensation in lieu of Performance

ARTICLE 218 (E.C. 215) IMPOSSIBILITY OF SPECIFIC PERFORMANCE

When specific performance by the debtor is impossible he will be condemned to pay damages for non-performance of his obligation, unless he establishes that the impossibility of performance arose from a cause beyond his control. The same principle will apply if the debtor is late in the performance of his obligation.

ARTICLE 219 (E.C. 216) CONTRIBUTION OF CREDITOR TO CAUSE OF LOSS

The Judge may reduce the amount of damages or may even refuse to allow damages if the creditor, by his own fault, has contributed to the cause of, or increased, the loss.

ARTICLE 220 (E.C. 217) DISCHARGE OF DEBTOR FROM LIABILITY

1. The debtor may by agreement accept liability for unforeseen events and for cases of force majeure.

2. The debtor may by agreement be discharged from all liability for his failure to perform the contractual obligation, with the exception of liability arising from his fraud or gross negligence. The debtor may, nevertheless, stipulate that he shall not be liable for fraud or gross negligence committed by persons whom he employs for the performance of the obligation.

3. Any clause discharging a person from responsibility for unlawful acts is void.

ARTICLE 221 (E.C. 218) CONDITION THAT DEBTOR BE FORMALLY SUMMONED

Damages, subject to an agreement to the contrary, are not due unless the debtor has been formally summoned (42).

(42) Default implies that the person who is entitled to call for the performance of an agreement has been damaged and that the person who is to perform is obliged to compensate him. A person is not in default until it is legally proved that his delay in performing the duty causes damage to the other party. A formal summons to perform is the instrument by which one person calls on another to do what he has undertaken to do.

ARTICLE 222 (E.C. 219) METHOD FOR FORMALLY SUMMONING DEBTOR

A debtor is formally summoned by a summons served through the Court or by any equivalent act. The summons may be by post in the manner provided for in the Code of Civil and Commercial Procedure or may result from an agreement stipulating that the debtor shall be considered to be in default by the mere fact of the expiration of the time period without any other formality being required.

ARTICLE 223 (E.C. 220) FORMAL SUMMONS NOT NECESSARY IN CERTAIN CASES

A formal summons to the debtor will not be necessary in the following cases :

(a) if the performance of the obligation becomes impossible or without interest by an act of the debtor.

(b) if the object of the obligation is the payment of damages in respect of an unlawful act.

(c) if the object of the obligation is the restitution of a thing that the debtor knew to have been stolen or of a thing that he received knowing that it was not due to him.

(d) if the debtor declares in writing that he does not intend to perform his obligation.

ARTICLE 224 (E.C.221) ASSESSMENT OF DAMAGES

1. The Judge will fix the amount of the damages, if it has not been fixed on the contract or by law. The amount of damages includes losses suffered by the creditor and profits of which he has been deprived, provided that they are the normal result of the failure to perform the obligation or of delay in such performance. These losses shall be considered to be a normal result if the creditor is not able to avoid them by making a reasonable effort.

2. When, however, the obligation arises from contract, a debtor who has not been guilty of fraud or gross negligence will not be held liable for damages greater than those which could have normally been foreseen at the time of entering into the contract.

ARTICLE 225 (E.C. 222) DAMAGES FOR MORAL PREJUDICE

1. Damages also include compensation for moral prejudice. The right to compensation for moral prejudice cannot, however, be transmitted to a third party, unless it has been fixed by agreement or unless it has been the subject of legal proceedings.

2. The Judge may award compensation for moral prejudice only to spouses and to relatives up to the second degree, by reason of grief caused to them by the death of the victim.

ARTICLE 226 (E.C. 223) FIXING AMOUNT OF DAMAGES IN CONTRACT

The parties may fix in advance the amount of damages either in the contract or in a subsequent agreement, subject to the provisions of Articles 218 or 223.

ARTICLE 227 (E.C. 224) AGREED DAMAGES NOT DUE

1. Damages fixed by agreement are not due if the debtor establishes that the creditor has not suffered any loss.

2. The Judge may reduce the amount of these damages if the debtor establishes that the amount fixed was grossly exaggerated or that the principal obligation has been partially performed.

3. Any agreement contrary to the provisions of the two preceding paragraphs is void.

ARTICLE 228 (E.C. 225) EXCESS OF DAMAGE OVER THAT AGREED

When the loss exceeds the amount fixed by the contract the creditor cannot claim an increased sum, unless he is able to prove that the debtor has been guilty of fraud or gross negligence.

ARTICLE 229 (E.C. 226) DAMAGE FOR DELAY

When the object of an obligation is the payment of a sum of money of which the amount is known at the time when the claim is made, the debtor shall be bound, in case of delay in payment, to pay to the creditor, as damages for the delay, interest at the rate of four per cent in civil matters and five per cent in commercial matters. Such interest shall run from the date of the claim in Court, unless the contract or commercial usage fixes anothe date. This article shall apply, unless otherwise provided in law.

ARTICLE 230 (E.C.227 except that interest in E.C. is 7%) AGREED INTEREST

1. The parties may agree upon another rate of interest either in the event of delay in effecting payment or in any other case in which interest has been stipulated, provided that it does not exceed 10%. If the parties agree to a rate exceeding ten per cent the rate will be reduced to ten percent and any surplus that has been paid shall be refunded.

2. Any commission or other consideration of whatsoever nature stipulated by the creditor which, together with the agreed interest, exceeds the maximum limits of interest set out above will be considered as disguised interest and will be subject to reduction, if it is not established that this commission or consideration is in respect of a service actually rendered by the creditor or of a lawful consideration.

ARTICLE 231 (E.C. 228) RIGHT OF CREDITOR TO INTEREST

Moratory interest, whether fixed by law or agreement, is due without the creditor being obliged to prove loss as a result of delay.

ARTICLE 232 (E.C. 229) POWER OF COURT TO REDUCE INTEREST

If a creditor, whilst claiming his rights, has, in bad faith, prolonged the duration of the litigation, the Judge may reduce the legal or contractual interest or may refuse to allow interest for the whole of the period during which the litigation has been unjustifiably prolonged.

ARTICLE 233 (E.C. 230) MORATORY INTEREST ON SALE OF EXPROPRIATED PROPERTY

In a distribution of the price of expropriated property creditors admitted to the distribution will only be entitled, as from the date of sale by auction, to moratory interest on amounts allocated to them in the distribution, if the purchaser is bound to pay interest on the price, or if the Court Treasury is bound to pay interest as a result of the deposit of the price at the Treasury and only to the extent of interest due by the purchaser or by the Treasury, which interest will be distributed amongst all the creditors pro rata.

ARTICLE 234 (E.C.231) DAMAGES IN ADDITION TO INTEREST

A creditor may demand damages in addition to interest if he establishes that a loss, in excess of an interest, was due to bad faith on the part of the debtor (43).

(43) Compare Articles 1150 and 1151 of the French Civil Code. When the debtor is of good faith, he has only to pay the damages which would result from the breach of contract which had been actually foreseen at the time of entering into the contract. A fraudulent breach of contract involves damages actually caused which might not have been capable of being foreseen, the principle being that a fraudulent person must repair all the wrong he has done, but it is limited by this, that he is not liable to pay for remote or indirect results of the breach but only for the necessary consequences thereof.

ARTICLE 235 (E.C. 232) INTEREST ON OUTSTANDING INTEREST

Subject to any commercial rules or practice to the contrary, interest does not run on outstanding interest and in no case shall the total interest that the creditor may collect exceed the amount of the capital.

ARTICLE 236 (E.C. 233) COMMERCIAL INTEREST ON CURRENT ACCOUNTS

The legal rate of commercial interest on current accounts varies according to the local market rate applicable, and capitalization is effected on current accounts according to commercial usage.

Section III

Means of Realizing and Securing the Rights of Creditors

ARTICLE 237 (E.C. 234) RIGHTS OF CREDITOR OVER PROPERTY OF DEBTOR

1. The debts of a debtor are secured by all his property.

2. Subject to any right of preference acquired in accordance with law all creditors are treated as regards this security on a footing of equality.

1. Means of Realizing the Rights of Creditors

ARTICLE 238 (E.C. 235) EXERCISE OF DEBTOR'S RIGHTS OF ACTION BY CREDITOR

1. Every creditor, even if his claim has not fallen due, may exercise in the name of his debtor all his debtor's rights of action save only those that are purely personal or cannot be attached.

2. The exercise by a creditor of the rights of his debtor is not admissible unless the creditor proves that the debtor himself has not exercised such rights and that the debtor's failure to do so is such as to result in or increase his insolvency. The creditor need not necessarily formally summon the debtor to exercise his rights but he must always join the debtor in the proceedings.

ARTICLE 239 (E.C. 236) EFFECT OF EXERCISE OF DEBTOR'S RIGHT BY CREDITOR

A creditor, in the exercise of his debtor's right, is deemed to be the debtor's representative. The proceeds resulting from the exercise of such rights fall into the patrimonium of the debtor and serve as security to all his creditors.

ARTICLE 240 (E.C. 237) ACTION TO DECLARE VOID ACTS OF DEBTOR

Any creditor whose claim has fallen due and whose debtor has entered into an act of alienation prejudicial to him may demand that such act be declared void so far as he is concerned, if such act has either diminished his (the debtor's) rights or increased his obligations, and has in consequence resulted in, or increased, his insolvency, when the conditions provided for in the following Article are all present.

ARTICLE 241 (E.C. 238) CONDITIONS FOR ACTION TO DECLARE ACTS OF DEBTOR VOID

1. If the act by the debtor is for valuable consideration it can only be held invalid as against the creditor if made by the debtor with the intent to defraud and if the other party to the contract was aware of the fraud. It suffices for the act to be considered fraudulent if the debtor knew, at the time that it was effected, that he was insolvent; the other party is deemed to have had knowledge of the fraud of the debtor if he was aware of the debtor's insolvency.

2. If, however, the act entered into by the debtor was gratuitous it is not valid as against the creditor, even if the transferee acted in good faith and it is established that the debtor did not commit fraud.

3. If a transferee disposes of property transmitted to him by a debtor for valuable consideration, a creditor can only claim avoidance of the act by the debtor if it was made for valuable consideration and if the second as well as the first transferee both knew of the debtor's fraud, and when the act by the debtor was gratuitous and the second transferee knew of the insolvency of the debtor at the time the debtor entered into the act in favour of the first transferee.

ARTICLE 242 (E.C. 239) INSOLVENCY OF DEBTOR

A creditor who alleges the insolvency of his debtor has only to establish the amount of his debts. It is for the debtor to prove that his assets are equal to or exceed his liabilities.

ARTICLE 243 (E.C. 240) EFFECT OF AVOIDANCE OF ACT OF DEBTOR

Once an act has been declared void the benefits that result from the cancellation of the act shall benefit all the creditors to whose prejudice the act was made.

ARTICLE 244 (E.C. 241) EVASION OF ACTION BY CREDITOR

When a person acquires a right from an insolvent debtor but has not paid the price, he may escape the consequence of an action by a creditor, provided that the price corresponds to the normal price and he deposits this price in the Court Treasury.

ARTICLE 245 (E.C. 242) SPECIAL CONDITIONS AS TO FRAUD

1. Fraud which consists solely of giving a creditor an unjustified preference over another creditor only entails the loss of that advantage by the creditor who has given the unjustified preference.

2. If an insolvent debtor pays off one of his creditors before the date originally fixed for payment, the payment is not valid as against the other creditors. Neither is a payment, made after the date fixed for payment, valid as against the other creditors if made as a result of a fraudulent arrangement between the debtor and the creditor so paid off.

ARTICLE 246 (E.C. 243) PRESCRIPTION

An action to set aside an act of alienation is prescribed after three years from the date on which the creditor has knowledge of the grounds for such an action. It is prescribed in any case after fifteen years from the date on which the contested alienation was effected.

ARTICLE 247 (E.C. 244) SIMULATED CONTRACT AND ITS EFFECT

1. If a simulated (44) contract has been drawn up, creditors of the contracting parties and particular successors in title, may, if they are in good faith, avail themselves of the hidden contract and establish by any means the simulation of the contract by which they were prejudiced.

2. In the case of a conflict of interest between interested parties, some of whom rely upon the ostensible contract and others on the hidden contract, the former shall have preference.

(44) There is simulation where the parties make an ostensible agreement, the effects of which are modified or entirely destroyed by another agreement contemporary with the first and intended to remain secret (Walton II p. 127). For example, a testator of Egyptian nationality who is not free to bequeath his whole estate to strangers may cloak the intention of donation under the guise of an onerous contract.

ARTICLE 248 (E.C. 245) PRECEDENCE OF GENUINE OVER OSTENSIBLE CONTRACT

When the contracting parties hide a genuine contract behind an ostensible contract the genuine contract will bind the contracting parties and their universal successors in title.

ARTICLE 249 (E.C. 246) THE RIGHT OF RETENTION (45)

1. A person who is under an obligation to supply something may refrain from performing his obligation so long as his creditor does not offer to perform an obligation incumbent on him arising out of the obligation of the debtor and connected therewith, or as long as the creditor does not supply adequate security to gurantee the performance of his obligation.

2. This right belongs especially to the possessor or holder of a thing, if he has incurred expenditure of a necessary or useful kind on the thing. The possessor or holder may, in such a case, refuse to return the thing until he has been repaid the amount due to him, unless the obligation of restitution results from an unlawful act.

(45) Right of retention (or right of lien): In those contracts where the action for the return of a thing is brought by a plaintiff who is himself in breach of some duty under the contract, the other party is given a right of retention of the thing until the plaintiff has fulfilled his legal obligations.

ARTICLE 250 (E.C.247. Article 1123 mentioned in para.3 hereof is Article 1119 in E.C.)
EFFECT OF RETENTION

1. A mere right of retention does not imply a privilege upon the thing.

2. A person who retains the thing must preserve the thing in accordance with the rules as to pledge and must render an account of the fruits.

3. If the thing retained is of a perishable nature or susceptible of deterioration, the person who retains the thing may obtain from the Court authority for its sale in accordance with the provisions of Article 1123. The right of retention will then be transferred to the price thereof.

ARTICLE 251 (E.C. 248) EXTINCTION OF RIGHT OF RETENTION

1. The right of retention is extinguished by the fact of the thing ceasing to be in the hands of the possessor or the holder.

2. A person retaining the thing, who has lost possession thereof without his knowledge or in spite of his opposition, may claim restitution of the thing, if he makes his claim within a period of thirty days from the time he became aware of the loss of possession, provided that one year has not elapsed since the date of loss.

Chapter III

Kinds of Conditions Modifying the Effects of Obligations

Section I

Conditional Obligations and Time Clauses

1. Conditional Obligations

ARTICLE 252 (E.C. 265) OBLIGATION DEPENDENT UPON CONDITION

An obligation is conditional when its existence depends on a future and uncertain event.

ARTICLE 253 (E.C. 266) OBLIGATION DEPENDENT UPON IMPOSSIBLE OR UNLAWFUL CONDITION

1. An obligation is void when the condition upon which it depends is impossible, contrary to morality or to public order, and the condition is suspensive (46), If the condition is resolutory (47) the condition itself is deemed to be inexistent.

2. An obligation depending upon a resolutory condition contrary to morality or public order is, however, void if the condition was the determining factor for undertaking the obligation.

(46) A suspensive condition is a condition which makes the coming into force of a legal relationship provided for in an agreement, dependent upon the happening of an uncertain future event, which event must be possible and lawful, e.g., a person insures his building against fire and the insurance company undertakes to indemnify him if the building is destroyed by fire.

(47) A resolutory condition is a condition which the extinguishment of a legal relationship, provided for in an agreement dependent upon the happening of a future uncertain event which must be possible and lawful, e.g., a donor stipulates that the gift will be rescinded if the donee dies before the donor.

ARTICLE 254 (E.C. 267) OBLIGATION DEPENDENT UPON SUSPENSIVE CONDITION

An obligation is void when it is subject to a suspensive condition by which the existence of the obligation depends solely on the will of the person who underttok the obligation.

ARTICLE 255 (E.C. 268) PERFORMANCE OF OBLIGATION DEPENDENT UPON SUSPENSIVE CONDITION

When an obligation depends on a suspensive condition it does not become executory until the condition is realized. Before realization of the condition such obligation is not subject to compulsory or to voluntary performance. A creditor may, however, take protective measures to safeguard his rights.

ARTICLE 256 (E.C. 269) THE RESOLUTORY CONDITION

1. An obligation is extinguished when the resolutory condition is realized. The creditor must restitute that which he has received; if restitution is impossible by reason of a cause for which he is responsible he will be liable for damages.

2. Acts of management carried out by a creditor shall retain their validity notwithstanding the realization of the condition.

ARTICLE 257 (E.C. 270) RETROACTIVE EFFECT OF CONDITION

1. The fulfilment of a condition is effective retroactively to the day on which the obligation was contracted unless it appears from the will of the parties or by reason of the nature of the contract that the existence of the obligation or its extinction should take effect from the moment of the fulfilment of the condition.

2. In any case, the condition will not have retroactive effect if the execution of the obligation becomes impossible before the fulfilment of the condition, on account of a cause independent of the debtor and for which he is not responsible.

2. Time Clauses

ARTICLE 258 (E.C. 271) DEFINITION

1. An obligation is for a term if its performance or extinction depends on a future certain event.

2. An event is considered to be certain if it must happen of necessity even if the time at which it should happen is unknown.

ARTICLE 259 (E.C. 272) FIXING OF TIME BY JUDGE

When it results from the obligation that the debtor shall only perform the obligation when he is able to do so or when he has the means to do so, the Judge will fix a reasonable time for the term, taking into account the actual and future resources of the debtor and allowing for the diligence of a man anxious to perform his obligations.

ARTICLE 260 (e.c.273) FORFEITURE OF BENEFIT OF TERM

A debtor will forfeit the benefit of the term:

1. If he is declared bankrupt in accordance with the provisions of the law (48).

2. If he has, by his own act, apparently diminished the special security given to the creditor, even if this security was given by a subsequent act or by virtue of the law, unless the creditor perfers to demand additional security. If the reduction of the security is due to a cause for which the debtor is not responsible, he will forfeit his rights to the term unless he provides adequate security.

3. If he does not supply the creditor with the security promised in the contract.

(48) In the E.C. the words "or insolvent" follow "bankrupt" but this has been omitted in the Libyan Code.

ARTICLE 261 (E.C. 274) EFFECT OF THE TERM

1. An obligation with a suspensive term only becomes due on the date of the expiration of the term. The creditor may, however, even before the end of the term, take measures to protect his rights and may, in particular, ask for security if he fears that the debtor may become bankrupt or insolvent, and has reasonable ground for his fears.

2. At the end of a resolutory term the obligation is extinguished without such extinction having any retroactive effect.

Section II

Plurality of Objects of an Obligation

1. Alternative Obligations

ARTICLE 262 (E.C. 275) DEFINITION

An obligation is alternative when its object includes numerous presentations and the debtor is entirely freed by the performance of one of them. The option, in the absence of any special provision in the law or of an agreement by the parties to the contrary, belongs to the debtor.

ARTICLE 263 (E.C. 276) REFUSAL OF A WANT OF AGREEMENT AS TO OPTION

1. If the option belongs to the debtor and he fails to elect or if there are a number of debtors who do not agree among themselves, the creditor may apply to the Judge to fix a term for the debtor to elect or for the several debtors to agree among themselves, failing which the Judge will himself fix the object of the obligation.

2. If the option belongs to the creditor and he fails to elect, or if there are a number of creditors who do not agree among themselves, the Judge, if required by the debtor, will fix a term at the expiration of which the option will pass to the debtor.

ARTICLE 264 (E.C. 277) IMPOSSIBILITY OF PERFORMANCE

If the option belongs to the debtor and not one of the several prestations included in the object of the obligation can be performed, he shall be bound to pay the value of the last of the prestations that became impossible to perform if he is responsible for the impossibility of performance even as regards one only of the prestations.

2. Facultative Obligations

ARTICLE 265 (E.C. 278) DEFINITION

1. An obligation is facultative when its object consists of one prestation only but the debtor may free himself of the obligation by the performance of another prestation in its place.

2. The object of the obligation is the prestation promised and not that prestation the performance of which frees the debtor. It is this object which determines the nature of the obligation.

Section III
Plurality of Parties to an Obligation

1. Joint and Several Obligations

ARTICLE 266 (E.C. 279) SOLIDARITY NOT PRESUMED

Solidarity between creditors or between debtors is not presumed. It is created by agreement or by law.

ARTICLE 267 (E.C. 280) SOLIDARITY BETWEEN CREDITORS

1. When there is solidarity between creditors, the debtor may pay the debt to any one of them unless one of them objects to such payment.

2. Solidarity does not prevent the debt being divided between the heirs of one of the joint and several creditors unless the debt itself is indivisible.

ARTICLE 268 (E.C. 281) RIGHT OF ACTION AGAINST DEBTOR AND DEFENCES THERETO

1. Joint and several creditors may take proceedings jointly or severally against the debtor for the performance of the obligation. In so doing the conditions modifying the effect of the obligation as between each creditor and the debtor should be taken into account.

2. A debtor cannot, if he is sued for payment by one of his joint and several creditors, set up as a defence against that creditor defences that are personal as regards the other creditors, but he may set up defences which are personal to the creditor suing him and those which are common to all the creditors.

ARTICLE 269 (E.C. 282) RELEASE OF DEBTOR

1. If a debtor is released of his debt to one of his joint and several creditors for a reason other than performance, he shall be released as regards the other creditors only up to the amount of the share of the creditor to whom he is no longer liable.

2. No one of the joint and several creditors may act in such a way as to prejudice the rights of the other creditors.

ARTICLE 270 (E.C. 283) SHARES OF JOINT AND SEVERAL CREDITORS

1. That which a joint and several creditor receives on account of the debt reverts to all the creditors and will be divided between them proportionately.

2. The division shall be made in equal parts if there is no agreement or provision of the law to the contrary.

ARTICLE 271 (E.C. 284) SOLIDARITY OF DEBTORS

When there is solidarity between the debtors payment effected by one of them liberates all the others.

ARTICLE 272 (E.C. 285) ACTION AGAINST JOINT AND SEVERAL DEBTORS

1. A creditor may take action against all his joint and several debtors jointly or severally. In so doing the conditions modifying the effect of the obligations as between the creditor and each of the co-debtors should be taken into account.

2. A co-debtor who is sued by a creditor for performance cannot set up against that creditor defences that are personal to other co-debtors, but he may set up defences that are personal to himself as well as those common to all co-debtors.

ARTICLE 273 (E.C.286) NOVATION OF DEBT

Novation (49) of a debt between the creditor and one of the joint and several debtors releases other co-debtors unless the creditor has reserved his rights against them.

(49) Novation is the substitution of a new debt for an old one which ceases to exist, or of the substitute of a new creditor or a new debtor.

ARTICLE 274 (E.C.287) COMPENSATION

A joint and several debtor cannot set up compensation (50) with regard to that which a creditor owes to one of the other co-debtors, except in respect of the share of such co-debtor.

(50) See Article 349 of Libyan Code.

ARTICLE 275 (E.C.288) MERGER

Merger (51) that occurs in the person of a creditor and of one of the joint and several debtors does not extinguish the debt as regards to other co-debtors except to the extent of the merger share of the co-debtor.

(51) See Article 357 of Libyan Code.

ARTICLE 276 (E.C. 289) RELEASE OF DEBT

1. A release of debt granted by the creditor to one of the joint and several debtors does not release the other co-debtors unless the creditor expressly declares such to be the case.

2. In the absence of such a declaration the creditor may only claim from the other co-debtors the balance of the debt after deduction of the share of the co-debtor whom he has released, unless he has reserved his rights against them for the whole of the debt. In such a case the joint and several debtors have a claim against the co-debtor who has been released for his share in the debt.

ARTICLE 277 (E.C. 290) RELEASE FROM JOINT AND SEVERAL LIABILITY

If a creditor releases one of the joint and several debtors from the joint and several liability his right to claim the whole of the debt from the other co-debtors remains unless otherwise agreed.

ARTICLE 278 (E.C. 291) EFFECT OF RELEASE OF DEBT OR RELEASE OF JOINT AND SEVERAL LIABILITY

1. In all cases of the release of one of the joint and several debtors either from the debt or from the joint and several liability the other co-debtors may in accordance with Article 285 (52) claim from the co-debtor who has been released his contribution in the share of those co-debtors who are insolvent.

2. If, however, the creditor has discharged the co-debtor to whom he has given a release from all liability in respect of the debt, the creditor will bear himself the contribution of such a co-debtor in the share of the insolvent co-debtors.

(52) See Article 298 in E.C.

ARTICLE 279 (E.C. 292) PRESCRIPTION

1. If the debt is extinguished by prescription as regards one of the joint and several debtors the other co-debtors will only benefit from this prescription to the extent of the contribution of that co-debtor.

2. If the prescription is interrupted or suspended as regards one of the joint and several debtors, the creditor cannot claim interruption or suspension as regards the other co-debtors.

ARTICLE 280 (E.C. 293) PERFORMANCE AND DEMAND

1. In the performance of an obligation a joint and several debtor is only responsible for his own acts.

2. A formal demand to one of the joint and several debtors or proceedings taken against one of them by the creditor will have no effect against the other co-debtors, but if one of the joint and several debtors issues a formal demand against the creditor, this demand will benefit the other co-debtors.

ARTICLE 281 (E.C. 294) TRANSACTION BETWEEN CREDITOR AND ONE OF JOINT AND SEVERAL DEBTORS

A transaction entered into between a creditor and one of the joint and several debtors will benefit the other co-debtors if it involves remission of the debt or the release of the liability in respect thereof in any other way. If such a transaction creates an obligation or increases the existing obligation, it will be binding upon the other co-debtors if they consent thereto.

ARTICLE 282 (E.C. 295) ACKNOWLEDGMENT OF DEBT BY DEBTOR

1. An acknowledgment of debt by one of the joint and several debtors does not bind the other co-debtors.

2. If one of the joint and several debtors refuses to take an oath or if he tenders the oath to the creditor and the creditor takes the oath, the oath refused or tendered will not prejudice the other co-debtors.

3. If the creditor tenders the oath to one of the joint and several debtors and this co-debtor takes the oath, the oath will profit the other co-debtors.

ARTICLE 283 (E.C. 296) EFFECT OF JUDGMENT AGAINST ONE OF JOINT AND SEVERAL CO-DEBTORS

1. A judgment given against one of the joint and several debtors will have no effect against the other co-debtors.

2. If the Judgment is given in favour of one of them it will benefit the others, unless the judgment is based on a ground relating only to the co-debtor in favour of whom the judgment is registered.

ARTICLE 284 (E.C. 297) RECOURSE BY ONE CO-DEBTOR AGAINST THE OTHER

1. If one of the joint and several debtors pays the debt in full he will only have a claim against each of the other co-debtors for each of such co-debtors' own share respectively, even if he exercises the right to action of the creditor by way of subrogation.

2. The amount paid is divisible between the co-debtors in equal parts in the absence of an agreement or a provision of law to the contrary.

ARTICLE 285 (E.C. 298) INSOLVENCY OF ONE OF THE CO-DEBTORS

If one of the joint and several debtors becomes insolvent his share shall be borne by the co-debtor who has effected payment and by all the other solvent co-debtors pro rata.

ARTICLE 286 (E.C. 299) DEBT CONCERNING ONE ONLY OF THE JOINT AND SEVERAL DEBTORS

When the debt concerns one only of the joint and several debtors (53) he will be liable for the whole debt to the other co-debtors.

(53) Compare Article 1120 of the Quebec Civil Code as follows:
"If the matter for which the debt has been contracted jointly and severally concerns only one of the co-debtors, he is liable for the whole towards his co-debtors, who. with regard to him, are considered as his sureties.

2. Indivisibility

ARTICLE 287 (E.C. 300) DEFINITION

An obligation cannot be divided:
(a) when it has for its object something which by its nature is not susceptible of division;

(b) if it is the intention of the parties or it follows from the purpose pursued by the parties that the performance of the obligation should not be divided.

ARTICLE 288 (E.C. 301) PLURALITY OF DEBTORS

1. Where there are debtors in respect of an individual obligation each debtor is liable for the debt in full.

2. A debtor who has effected payment will have a remedy against each of the other co-debtors for his part, unless the contrary follows from the circumstances.

ARTICLE 289 (E.C. 302) PLURALITY OF CREDITORS

1. When there are several creditors in respect of an indivisible obligation or several heirs of a creditor in respect of such an obligation each of the creditors or heirs may demand the performance in its entirety of the indivisible obligation. If one of the creditors or heirs contests such a demand the debtor shall effect payment to all the creditors together or deposit the object of the obligation in Court.

2. Co-creditors will have remedies against a creditor who has received payment, each one for his share.

Chapter IV

Section I

The Assignment of a Right

ARTICLE 290 (E. C. 303) RIGHTS CAPABLE OF BEING ASSIGNED

A creditor may assign his right to a third party, provided that his claim is not impossible of assignment by reason of a provision of the law, or an agreement between the parties or on account of its nature. The assignment is valid without the consent of the debtor.

ARTICLE 291 (E. C. 304) RESTRICTION UPON ASSIGNMENT OF RIGHT

A right can only be assigned to the extent to which it can be attached.

ARTICLE 292 (E. C. 305) EFFECT OF ASSIGNMENT

An assignment is not effective as against a debtor or a third party unless it has been accepted by the debtor or notified to him. The acceptance by the debtor does not render the assignment valid as against third parties unless it has an established date.

ARTICLE 293 (E. C. 306) PRECAUTIONARY MEASURES

The creditor to whom the assignment is made may, prior to notification of the assignment or to its acceptance, take all precautionary measures to safeguard the right that has been transferred to him.

ARTICLE 294 (E. C. 307) CONSEQUENTIAL RIGHTS

The assignment of a right comprises its warranties such as sureties, privileges and mortgages, as well as interest and instalments that have fallen due.

ARTICLE 295 (E. C. 308) EXTENT OF OBLIGATION OF ASSIGNOR

1. In the case of an assignment for valuable consideration the assignor, in the absence of an agreement to the contrary, only warrants the existence of the right assigned at the moment of the assignment.

2. When, however, the assignment is not for valuable consideration the assignor does not even warrant the existence of the right.

ARTICLE 296 (1st para. only of E. C. 309) SOLVENCY OF DEBTOR

An assignor does not warrant the solvency of the debtor unless such warranty is specifically stipulated.

ARTICLE 297 (E. C. 310) EXTENT OF WARRANTY

When assignee exercises his right of recourse in warranty against the assignor, in accordance with the two preceding Articles, the assignor is only liable to restitute that which he has received together with interest and expenses notwithstanding any agreement to the contrary.

ARTICLE 298 (E. C. 311) RESPONSIBILITY OF ASSIGNOR

An assignor is responsible for his personal acts, even if the assignment is not for valuable consideration or even if it has been stipulated to be without warranty.

ARTICLE 299 (E. C. 312) DEFENCE OPEN TO DEBTOR

A debtor of the right assigned may raise, as against the assignee, the defence that he was entitled to raise against the assignor at the time that the assignment became effective against him. He may also raise defences arising from the contract of assignment.

ARTICLE 300 (E.C. 313) PLURALITY OF ASSIGNMENTS

In the event of several assignments relating to the same right preference is given to the assignment that is first effective as regards third parties.

ARTICLE 301 (E.C. 314) EFFECTS OF ATTACHMENT

1. When an attachment is served upon the debtor of the debt assigned, before the assignment has become effective as against third parties, the assignment is equivalent to an attachment vis-a-vis the distrainer.

2. In this case, if another attachment is made after the assignment becomes effective as against third parties, the debt will be divided pro rata between the first distrainer, but the amount necessary to make up the amount of the sum the assignee and the second distrainer assigned will be deducted from the share of the second distrainer and paid to the assignee.

Section II
Assignment of Debt

ARTICLE 302 (E.C. 315) ASSIGNMENT OF DEBT

An assignment of debt is effected by an agreement between the debtor and a third party who undertakes to assume the debt in the place of the debtor.

ARTICLE 303 (E.C. 316) RATIFICATION OF ASSIGNMENT BY CREDITOR

1. An assignment of debt is not effective as against the creditor unless ratified by the creditor.

2. When the person assuming the debt or the original debtor notifies the assignment to the creditor and gives him a reasonable time to ratify the assignment, the assignment will be deemed to have been refused if the creditor does not give his consent before the expiration of such period.

ARTICLE 304 (E.C. 317) OBLIGATIONS OF ASSIGNEE

1. Until the creditor has signified his ratification or refusal of the assignment the person assuming the debt will, in the absence of an agreement to the contrary, be responsible to the original debtor to effect payment on due date to the creditor. This rule applies even when the creditor has refused the assignment.

2. The original debtor cannot, however, call upon the person assuming the debt to make payment to the creditor so long as he has not himself discharged his obligation to the person assuming the debt in accordance with the contract of assignment.

ARTICLE 305 (E.C. 318) CONSEQUENTIAL RIGHTS ATTACHING TO DEBT TRANSFERRED

1. The debt assigned is transmitted with all its warranties.

2. The surety, whether real or personal, does not remain bound to the creditor unless he has agreed to the assignment.

ARTICLE 306 (E.C. 319) WARRANTY OF SOLVENCY

In the absence of an agreement to the contrary the original debtor warrants the solvency of the person assuming the debt at the moment the creditor ratifies the assignment.

ARTICLE 307 (E.C. 320) DEFENCE WHICH ASSIGNEE MAY RAISE

A person assuming debt may raise against the creditor the defence which the original debtor was entitled to raise. He may also raise the defences arising out of the contract of assignment.

ARTICLE 308 (E.C. 320) AGREEMENT BETWEEN CREDITOR AND ASSIGNEE

1. An assignment of debt may also take place between the creditor and the person assuming the debt by an agreement that provides that such person replaces the original debtor in his obligation.

2. In such a case the provisions of Articles 305 and 307 (54) will be applicable.

(54) E.C. 138 and 320.

ARTICLE 309 (E.C. 322) SALE OF MORTGAGED REAL PROPERTY

1. The sale of a mortgaged immovable property does not imply the transfer of the mortgage debt to the purchaser unless the agreement provides for such a transfer.

2. If the vendor and the purchaser agree to assign the debt and if the deed of sale is transcribed the creditor should, after notification to him by legal process of the assignment, ratify or refuse the assignment within a period not exceeding six months. If he maintains silence up to the end of this period such silence is equivalent to ratification.

Chapter V

The Extinction of Obligations

Section I

Payment

1. The Two Parties to Payment

ARTICLE 310 (E.C. 323) PAYMENT

1. Payment (55) may be made by the debtor, by his representative or by any other interested party, subject to the provisions of Article 211. (56).

2. Payment may also, subject to the provisions of Article 211, be made by a third party who is not interested in such payment, even without the knowledge or against the wish of the debtor, but the creditor may refuse payment tendered by a third party if it is opposed by the debtor and the debtor has informed the creditor of his opposition.

(55) By payment is meant not only the delivery of a sum of money in satisfaction of an obligation but the performance of anything to which the parties are respectively obliged. Vide Quebec Civil Code Article 1139.

(56) E.C. 208.

ARTICLE 311 (E.C. 324) PAYMENT OF DEBT BY THIRD PARTY

1. If a third party pays off the debt such third party shall have a remedy against the debtor up to the amount that he has paid.

2. The debtor, against whose wish payment has been made, may contest the claim made against him by the person who has made the payment on his behalf as regards all or part of the payment made, if he shows that he had any interest whatsoever in opposing the payment.

ARTICLE 312 (E.C. 325) CONDITIONS FOR VALIDITY OF PAYMENT

1. Payment is only valid if the person who made the payment is the owner of that with which he has paid the obligation and has the capacity of disposing of it.

2. When payment of that which is due is made by a person without the necessary legal capacity to dispose of the thing with which payment is effected it extinguishes the obligation provided that it does not prejudice the person who has paid.

ARTICLE 313 (E.C. 326) SUBROGATION

When payment is made by a third party such third party is subrogated in the rights of the creditor who is paid off in the following cases:-

(a) When such third party was liable for the debt jointly with the debtor or was under an obligation to pay the debt on his behalf;

(b) When such third party, being himself a creditor, even an unsecured creditor, had paid another creditor ranking before him by reason of a real security;

(c) When, having acquired an immovable, he has paid the price to creditors having a real security upon the immovable in question;

(d) When the law expressly gives him the right of subrogation.

ARTICLE 314 (E.C. 327) SUBROGATION OF ANOTHER IN PLACE OF CREDITOR

A creditor who receives what is due to him from a third party may, by agreement with the third party, subrogate such third party into his rights even if the debtor does not agree to the subrogation. The agreement must not be concluded after the time of payment (57).

(57) Compare the French Civil Code, Article 1250. "Subrogation takes place by virtue of an agreement (1) when the creditor having been paid off by a third party puts him into his, the creditor's, shoes as regards his rights, rights of action, priorities or mortgages. Such subrogation must be express and effected by the time of payment. (2) When the debtor borrows a sum in order to pay his debts and to subrogate thereby the lender in the rights of the creditor.

ARTICLE 315 (E.C. 328) SUBROGATION OF LENDER IN PLACE OF CREDITOR

A debtor may also, when he has borrowed a sum with which he has paid the debt subrogate the lender into the rights of the creditor who received the payment, even without the consent of the creditor, provided that in the contract of loan it is stated that the sum in question was borrowed for the purpose of effecting the payment and that in the receipt in discharge it is stated that the payment was made with the money lent by the new creditor.

ARTICLE 316 (E.C. 329) EFFECTS OF SUBROGATION

A third party subrogated in law or by agreement in the rights of the creditor is substituted for the creditor as regards the debt to the amount of the sums that he has himself paid with all the attributes of the debt and all accessories, securities and defences attached to the debt.

ARTICLE 317 (E.C. 330) PARTIAL SUBROGATION

1. In the absence of an agreement to the contrary, when a third party pays part of a debt to a creditor and is subrogated into the rights of the creditor as regards such part, the creditor shall not be prejudiced by such partial payment and may exercise his rights for that which remains due, in preference to the third party.

2. When a further third party is subrogated in the rights of the creditor, as regards that which remains due to this creditor, this further third party so subrogated, together with the third party subrogated before him, will have a right to claim what is due to each of them pro rata.

ARTICLE 318 (E.C. 331) SUBROGATION OF MORTGAGEE OF IMMOVABLE PROPERTY IN PLACE OF CREDITORS

A third party holder of a mortgaged property who has paid all the mortgage debt and has been subrogated into the rights of the creditors, shall only have the right, by reason of such subrogation, to claim from the holder of another property mortgaged for the same debt the share of that holder in the debt proportional to the value of the immovable held by him.

ARTICLE 319 (E.C. 332) TO WHOM PAYMENT SHOULD BE MADE

Payment shall be made to the creditor or to his representative. A person who produces to the debtor a receipt in discharge issued by the creditor is deemed to be qualified to receive payment unless it has been agreed that payment shall be made to the creditor in person.

ARTICLE 320 (E.C. 333) PAYMENT TO OTHER THAN THE CREDITOR OR HIS REPRESENTATIVE

Payment to someone other than the creditor or his representative does not free the debtor of his obligation unless the payment is ratified by the creditor, or profits the creditor and then only to the extent of such profit, or unless the payment was made in good faith to a person holding the title to the debt.

ARTICLE 321 (E.C. 334) REFUSAL OF CREDITOR TO ACCEPT PAYMENT

When a creditor refuses, without good reason, to accept payment that is regularly offered to him, or to do such things without which payment cannot be made, or declares that he will not accept payment, he will be deemed to have been duly summoned to accept payment from the time that such refusal is recorded by a summons notified to him by legal process.

ARTICLE 322 (E.C. 335) EFFECT OF REFUSAL

From the time that a summons has been served on a creditor he shall be responsible for the loss or the deterioration of the thing and interest on the debt ceases to run; the debtor shall then have the right to place the thing in safe keeping at the cost of the creditor and claim compensation for any damage he may have suffered.

ARTICLE 323 (E.C. 336) PLACING THING IN SAFE-KEEPING

When the subject matter of the payment is a definite and specific thing which must be delivered at the place where it is situated, the debtor may, after having summoned the creditor to take delivery, obtain an order of the Court to place it in safe-keeping. If the thing in question is an immovable or a thing intended to remain in place the debtor may ask for it to be placed under Judicial custody.

ARTICLE 324 (E.C. 337) SALE BY PUBLIC AUCTION

1. The debtor may, by permission of the Judge, sell by public auction things of a rapidly perishing nature or movables that necessitate an exorbitant expenditure for safe-keeping or custody, and deposit the price in the Treasury of the Court.

2. When the thing has a known price on the market or is quoted on the stock exchange it may only be sold by public auction if it is impossible to sell it by agreement at the market or quoted price.

ARTICLE 325 (E.C. 338) OTHER PERMISSIBLE REASONS FOR DEPOSIT (58)

Deposit or any other equivalent measure is also permissible if the debtor does not know the person or the domicile of the creditor, being totally or partially incapable, has not a representative to accept payment on his behalf, or if the debt is the object of a dispute between several persons, or if there are other serious reasons which justify this measure.

(58) Deposit is used here to cover deposit in safe-keeping with a third party or deposit in the Treasury of the Court.

ARTICLE 326 (E.C.339) EFFECT OF ACTUAL TENDER OF THING

The actual tender (59) of the thing due is equivalent to payment, in so far as the debtor is concerned, when it is followed by a deposit made in the manner prescribed in the Civil and Commercial Procedure Code, or by any other equivalent measure, provided that it is accepted by the creditor or recognised as valid by a final judgment.

(59) Tender includes the performance of the contract and includes offers to do anything necessary.

ARTICLE 327 (E.C. 340) RETRACTION OF TENDER

1. A debtor who has made a tender of the debt followed by a deposit, or by an equivalent measure, may retract his tender so long as it has not been accepted by the creditor, or so long as it has not been recognised as valid by a final judgment, in which case the co-debtor and sureties will be freed.

2. If a debtor retracts his tender after its acceptance by the creditor or after it has been declared valid by a judgment, and his withdrawal is accepted by the creditor, the creditor shall no longer have the right to avail himself of the securities guaranteeing his right and the co-debtors and the sureties shall in such case be released.

2. Means of Payment

ARTICLE 328 (E.C. 341) MEANS OF PAYMENT

Payment must be made with the very thing due. The creditor cannot be forced to accept anything else, even if the value of such other thing is equal or greater.

ARTICLE 329 (E.C. 342) PART PAYMENT

1. In the absence of an agreement or a legal provision to the contrary the debtor cannot force his creditor to accept a partial payment of his debt.

2. If, in a case where part of the debt is contested, a creditor agrees to receive payment of that part of the claim which is admitted, the debtor cannot refuse to pay the part that is admitted.

ARTICLE 330 (E.C. 343) PAYMENT OF DEBT AND EXPENSES ATTACHED THERETO

When a debtor is under an obligation to pay expenses and interest in addition to the principal of the debt and makes a payment which does not cover the principal and these accessories, the payment shall, unless otherwise agreed, be imputed, in the first instance, to expenses, then the interest and lastly to principal.

ARTICLE 331 (E.C. 344) PLURALITY OF DEBTS

If a debtor owes the same creditor several debts of the same kind and if the payment made by him does not suffice to cover all the debts, he has the right to indicate, when effecting payment, the debt which he intends to discharge, provided that he is not prevented from so doing by law or by agreement.

ARTICLE 332 (E.C. 345) ORDER OF PAYMENT OF VARIOUS DEBTS

Failing any indication by the debtor as provided for in the preceding Article, the payment shall be imputed to the debt that has fallen due; in a case where several debts have fallen due, to the most onerous debt, in a case where the debts are all equally onerous, to the debt indicated by the creditor.

ARTICLE 333 (E.C. 346) TIME FOR PAYMENT FALLING DUE

1. In the absence of an agreement or of a provision of the law to the contrary, payment must be made as soon as the obligation has been definitely created as a liability of the debtor.

2. The Judge may in exceptional cases and in the absence of a provision of the law to the contrary, grant to the debtor, when his position so requires, one or more reasonable delays for the performance of his obligation, provided that no serious prejudice is thereby caused to the creditor.

ARTICLE 334 (E.C. 347) PLACE OF PAYMENT

1. In the absence of an agreement or of a provision of the law to the contrary, when the subject matter of the obligation is a definite and ascertained thing, it should be delivered at the place it was situated at the time the obligation was created.

2. In the case of other obligations payment is due at the debtor's domicile at the time of payment or at his place of business if the obligation is connected with such business.

ARTICLE 335 (E.C. 348) EXPENSES IN CONNECTION WITH PAYMENT

In the absence of an agreement or a provision of the law to the contrary, expenses in connection with payment are at the charge of the debtor.

ARTICLE 336 (E.C. 349) RELEASE

1. A person who pays part of a debt has the right to demand a receipt for the amount he has paid and a note showing the payment on the document of title of the debt. He has also the right, at the time the debt is paid in full, to demand the restitution or the cancellation of the document of title. If this document has been lost the debtor may demand a written declaration from the creditor that the document of title has been lost.

2. If the creditor refuses to comply with the conditions laid down in the preceding paragraph the debtor may place the object due in judicial custody.

Section II

Methods of Extinction of the Obligation Equivalent to Performance

1. Giving in Payment (60)

(60) Nothing hinders the creditors from consenting to take something different from the thing which he had at first stipulated. If he does so, there is said to be a "giving in payment".

ARTICLE 337 (E.C.350) WHAT MAY STAND IN PLACE OF PAYMENT

When a creditor accepts in settlement of his right another prestation in place of that which is due, this giving in payment takes the place of payment.

ARTICLE 338 (E.C. 351) SPECIAL PROVISIONS AS TO GIVING IN PAYMENT

The provisions of the law relating to sale, especially those which relate to the legal capacity of the parties, warrant against eviction and hidden defects, apply to "giving in payment" in cases where it transfers the ownership of the thing given in place of the prestation due. The provisions of the law relating to payment, especially those which relate to the imputation of sums paid and to the extinction of warranties, are also applicable in so far as "giving in payment" extinguishes the debt.

2. Novation and Delegation

ARTICLE 339 (E.C. 352) NOVATION

There is novation of an obligation:

1. by a change of the debt, when the two parties agree to substitute a new obligation for the original obligation, which new obligation differs from the original obligation as regards its object or as regards its source.

2. by a change of the debtor, when a creditor and a third party agree that such third party shall take the place of the original debtor and that the original debtor shall be released of the debt without the consent being necessary, or when the debtor has procured the consent of the creditor to substitute the debtor by a third party who consents to be the new debtor.

3. by a change of the creditor, when the creditor, the debtor, and a third party agree that this third party shall be the new creditor.

ARTICLE 340 (E.C. 353) CONDITIONS FOR NOVATION

1. Novation can be effected only if the two obligations, the original and the new obligation, are free from any grounds of nullity.

2. If the original obligation results from a voidable contract, the novation is only valid if the new obligation has been assumed both with a view to confirming the contract and to replacing the original obligation.

ARTICLE 341 (E.C. 354) PRESUMPTION OF NOVATION

1. Novation is not presumed; it must be expressly agreed or result clearly from the circumstances.

2. In particular, novation does not result, in the absence of an agreement to the contrary, from the subscription of a promissory note in respect of a pre-existing debt, from changes that relate only to the date, place or mode of performance of the prestation, or from modifications made to the obligation only as regards securities or as to the rate of interest.

ARTICLE 342 (E.C. 355) CURRENT ACCOUNT

1. The mere entry of the debt in current account does not effect novation.

2. There is, however, novation when the balance of a current account has been fixed and agreed; if, however, the debt was guaranteed by means of a special security, that security is maintained unless otherwise agreed.

ARTICLE 343 (E.C. 356) EFFECTS OF NOVATION

1. Novation has the effect of extinguishing the original obligation with its accessories and of substituting for it a new obligation.

2. Securities which guaranteed the performance of the original obligation are not transferred to the new obligation, unless the law provides otherwise, or unless it appears from the agreement or the circumstances of the case that such is the intention of the parties.

ARTICLE 344 (E.C. 357) REAL SECURITIES

If the debtor has given real securities in guarantee of the original obligation, the following conditions will be observed in the agreement providing for the transfer of these securities to the new obligation:

(a) When the novation results from a change of the debt, the creditor and the debtor may agree that the securities shall be transferred to the new obligation, to the extent that such a transfer does not cause prejudice to third parties;

(b) When the novation results from a change of the debtor, the creditor and the new debtor may agree, without the consent of the original debtor, that the real securities shall be maintained;

(c) When the novation results from a change of the creditor, the three contracting parties may agree that the securities shall be maintained.

The agreement providing for the transfer of the real securities cannot be set up against third parties, unless it is made at the same time as the novation, and the provisions as to the registration of real rights are complied with.

ARTICLE 345 (E. C. 358) CONSENT OF SURETIES AND JOINT AND SEVERAL CO-DEBTORS

Real and personal as well as joint and several suretyship is only transferred to the new obligation with the consent of the sureties and of the joint and several co-debtors.

ARTICLE 346 (E. C. 359) DELEGATION

1. There is delegation when a debtor procures the acceptance by his creditor of a third party who undertakes to pay in his stead.

2. Delegation does not necessarily infer the existence of a previous debt between the debtor and such third party.

ARTICLE 347 (E. C. 360) EFFECT OF DELEGATION

1. When in a case of delegation the contracting parties agree to substitute a new obligation for the original obligation, such a delegation constitutes a novation by the change of the debtor. It results in the liberation of the original debtor from the obligation to his creditor. Provided that the new obligation assumed by the new debtor is valid and that such new debtor is not insolvent at the time of the delegation.

2. Novation is not assumed in a case of delegation; in the absence of an agreement providing for novation the original obligation continues concurrently with the new obligation.

ARTICLE 348 (E. C. 361) VALIDITY OF OBLIGATION OF NEW DEBTOR TOWARDS CREDITOR

In the absence of an agreement to the contrary, the obligation of the new debtor towards the creditor is valid even if his obligation towards the original debtor is void or liable to be contested, subject to the new debtor's right of recourse against the original debtor.

3. Compensation (Set Off)

ARTICLE 349 (E.C. 362) DEBTS WHICH MAY BE COMPENSATED

1. A debtor has a right to compensation of that which he owes to his creditor against that which such creditor owes to him, even when the causes giving rise to the two debts are different, provided that they are both for a sum of money or fungibles of a like nature and quality, that they are not in dispute and that they are due and may be sued for (61).

(61) Compensation (set off) is the balance struck between two debts which cancel each other in whole or in part. One debt wipes out the other (Walton II, p.514).

Compare the Quebec Civil Code, Article 1187. When two persons are mutually debtors and creditors of each other, both debts are extinguished by compensation.

2. Postponement of payment by reason of a delay granted by the Judge or by the creditor does not prevent compensation.

ARTICLE 350 (E.C. 363) DIFFERENT PLACES OF PAYMENT OF TWO DEBTS

A debtor may avail himself of compensation even when the places of payment of the two debts are different, but he must, in such a case, make good any loss caused to the creditor by reason of the fact that the creditor was not able, as a result of the compensation, to obtain or to perform the presentation at the place fixed for this purpose.

ARTICLE 351 (E.C. 364) WHEN COMPENSATION MAY NOT TAKE PLACE

Compensation takes place, whatever may be the sources of the debts, except in the following cases :

(a) where one of the two debts consists of a thing of which the owner has been unjustly deprived, and is the object of a claim for restitution;

(b) where one of the two debts consists of a thing that has been deposited or lent for use and is the object of a claim for restitution;

(c) where one of the two debts is a right which is not liable to attachment.

ARTICLE 352 (E.C. 365) CONDITION FOR HOLDING TO COMPENSATION

1. Compensation only takes place when set up by the interested party. Compensation cannot be renounced before the right thereto has come into existence.

2. Compensation extinguishes the two debts to the extent of the amount of the smaller debt, from the moment they become subject to compensation. Imputation of the amount discharged in compensation takes place in the same way as in ordinary payment.

ARTICLE 353 (E.C. 366) DEBTS UPON WHICH PERIOD OF PRESCRIPTION HAS EXPIRED

If the delay for prescription of a debt has expired when compensation is set up, compensation will nevertheless still take place if the delay for prescription has not expired when compensation became possible.

ARTICLE 354 (E.C. 367) RIGHTS OF THIRD PARTIES

1. Compensation cannot take place to the detriment of rights acquired by third parties.

2. If, after seizure by a third party of the property held by the debtor for his creditor, such debtor becomes the creditor of his creditor, he cannot set up compensation to the prejudice of the attaching creditor.

ARTICLE 355 (E.C. 368) TRANSFER OF DEBTS

1. When a creditor has asigned his debt to a third party, the debtor who has consented to the assignment without reserve, cannot set up compensation against the assignee, which he had the right to set up before he consented to the assignment; he can only enforce his claim against the assignor.

2. But a debtor who has not accepted an assignment which has been notified to him, may, notwithstanding the assignment, set up compensation.

ARTICLE 356 (E.C. 369) SECURITIES ATTACHING TO DEBT

A debtor who had the right to set up compensation but who nevertheless paid his debt, cannot avail himself, to the prejudice of third parties, of the securities guaranteeing his right unless he did not know of the existence of his right.

4. Merger

ARTICLE 357 (E.C. 370) EFFECT OF MERGER

1. When the qualities of creditor and debtor in the same debt are united in the same person, the debt is extinguished to the extent of the merger.

2. When the cause which gave rise to the merger disappears and its disappearance is retroactive, the debt revives with its accessories as regards all interested parties, and the merger is deemed never to have existed.

Section III

The Extinction of Obligations Without Payment

1. Release of the Obligation

ARTICLE 358 (E.C. 371) EFFECT OF RELEASE

Obligations are extinguished by a voluntary release of a debtor by his creditor. The release is completed as soon as it comes to the knowledge of the debtor, but becomes void if refused by him.

ARTICLE 359 (E.C. 372) RULES AS TO RELEASE

1. The release of an obligation is subject to the basic rules that govern gifts. (68)

2. No special form is required for release even if it is the release of an obligation whose existence was conditional upon a special form required by law or by the agreement entered into by the parties.

2. Impossibility of Performance

ARTICLE 360 (E.C. 373) IMPOSSIBILITY OF PERFORMANCE

An obligation is extinguished if the debtor establishes that its performance has become impossible by reason of causes beyond his control.

3. Extinctive Prescription (63)

(63) Extinctive prescription is a means of extinguishing an obligation by the inaction of the creditor for a certain time fixed by law (Walton II, p.537).
Acquisitive prescription is a means of acquiring ownership of real rights by possession, provided the possession has certain characteristics (Walton II, p.536)

ARTICLE 361 (E.C. 374) GENERAL PRESCRIPTION

The term of prescription for obligations is fifteen years with the exception of those cases for which a special provision is contained in the law and with the exception also of the following cases.

ARTICLE 362 (E.C. 375) PRESCRIPTION AFTER FIVE YEARS

1. The term of prescription for sums payable periodically, at recurring intervals, such as the rent of buildings and of agricultural land, the rent of hekr (62), interest, periodical payments, salaries, wages and pensions is five years, even if the debt is admitted by the debtor.

(62) For a definition of 'hekr', see Article 1013.

2. The term of prescription for revenue due by a holder in bad faith and for revenue due by the trustee of a waqf to the beneficiaries is fifteen years.

ARTICLE 363 (E.C. 275) SPECIAL CONDITIONS AS TO PRESCRIPTION

The term of prescription for sums due to physicians, chemists, lawyers, engineers, experts, receivers in bankruptcy, brokers, professors or teachers is five years, provided that the debts are due as remuneration for work coming within the scope of their professions or in payment of expenses incurred by them.

ARTICLE 364 (E.C. 377) PRESCRIPTION AFTER THREE YEARS

1. The term of prescription for taxes and dues owing to the State is three years. The term of prescription for taxes and annual dues commences to run from the end of the year for which they were due; that for fees for legal documents from the date of termination of the hearing of the case in respect of which such documents were prepared, or, if no hearing takes place, for the drawing up of such documents.

2. The term of prescription ot the right to claim repayment of taxes and dues unduly paid is also three years. This prescription runs from the date of payment.

3. The preceding provisions apply subject to provisions contained in special laws.

ARTICLE 365 (E.C. 378) PRESCRIPTION AFTER ONE YEAR

1. The term of prescription is one year for the following rights of action:
(a) the rights of action of merchants and manufacturers in respect of things supplied to persons who do not trade in these articles, as well as the rights of action of hotel and restaurant proprietors for the cost of accommodation and food and for expenses incurred by them on behalf of their clients.
(b) the rights of action of workmen, servants, wage earners, in respect of their pay, daily or otherwise, and for the cost of supplies provided by them.

2. When a person claims this prescription of one year, he must take an oath that he has actually paid the debt. The Judge will of his own accord pass the oath. If the debtor is dead, such oath will be passed to the heirs of the debtor, or, if they are minor; to the guardians so that they may declare either that they do not know of the existence of the debt or that they know that the debt has been paid.

ARTICLE 366 (E.C.379. E.C.Articles 376 and 378 are mentioned in place of Articles 363 and 365 here quoted)

COMMENCEMENT OF PERIOD OF PRESCRIPTION IN SPECIAL CIRCUMSTANCES

1. The term of prescription in respect of rights referred to in Articles 363 and 365 hereof runs from the time that the prestations were made by the creditors, even when the creditors continue to make further prestations.

2. Once anyone of these rights has been established by a written document it is only prescribed after fifteen years.

ARTICLE 367 (E.C. 380) CALCULATION OF PERIOD OF PRESCRIPTION

Periods of prescription are calculated in days, not in hours; the first day does not count and prescription is completed when the last day is at an end.

ARTICLE 368 (E.C. 381) RUNNING OF PRESCRIPTION

1. Prescriptions run, subject to a special provision of the law, to the contrary, only from the day on which the debt comes due.

2. Prescriptions in particular only run, in the case of a debt that is subject to a suspensive condition, from the day on which the condition is realized; in the case of an action on a warranty against eviction, only from the date eviction takes place; in the case of a debt payable in the future, only from the date of the expiration of the term.

3. When the date upon which the obligation becomes due depends upon the will of the creditor, prescription runs from the date on which he is in a position to express his will.

ARTICLE 369 (E.C. 382) STAY OF PRESCRIPTION

1. Prescription does not run whenever there is a bar, even a moral one, which prevents the creditor from claiming his right. It does not run between a principal and his representative.

2. Prescription of which the period is more than five years, does not run as regards persons who are legally incapable, absent or convicted criminals if they are not legally represented.

ARTICLE 370 (E.C. 383) INTERRUPTION OF PRESCRIPTION

Prescription is interrupted by legal proceedings, even if instituted in a Court without jurisdiction, by a summons or by an attachment, by the application of a creditor for the admission of his claim in a bankruptcy or in a distribution, or by any act of a creditor to claim his right in the course of legal proceedings.

ARTICLE 371 (E.C. 384) INTERRUPTION OF PRESCRIPTION BY ADMISSION OF DEBTOR

1. Prescription is interrupted by an express or tacit admission of the right of the creditor by the debtor.

2. A debtor who leaves a pledge in the hands of his creditor as security for his debt is deemed to have tacitly acknowledged the debt.

ARTICLE 372 (E.C. 385) EFFECT OF INTERRUPTION

1. When prescription is interrupted, a new prescription commences to run from the time that the effect of the act that gave rise to the interruption has ceased. The term of the new prescription will be of the same duration as that of the former one.

2. When the debt has been confirmed by a final judgment or when, in the case of a debt prescribed after one year, the prescription has been interrupted by the admission of the debtor, the term of the new prescription will be fifteen years unless the debt confirmed by the judgment involves periodical recurring obligations which will not become due until after the judgment.

ARTICLE 373 (E.C. 386) EFFECT OF PRESCRIPTION

1. Prescription extinguishes the obligation but leaves a natural obligation upon the debtor.

2. When a right is extinguished by prescription, interest and other accessories to the debt are also extinguished even if the term of the particular prescription applying to these accessories has not expired.

ARTICLE 374 (E.C. 387) PRESCRIPTION MUST BE INVOKED

1. The Judge of his own initiative cannot invoke prescription. Prescription must be invoked by the debtor, or by his creditors, or by an interested party, even if the debtor has failed to do so.

2. Prescription may be invoked at any stage of the proceedings, even before the Court of Appeal.

ARTICLE 375 (E.C. 388) RENOUNCING OF PRESCRIPTION

1. A debtor cannot renounce the benefit of prescription before he has acquired the right to invoke it, nor can he agree to a term of prescription other than that fixed by law.

2. A person, however, who is legally capable of disposing of his rights, may renounce, even tacitly, a right to prescription which he is in a position to invoke, but a renunciation made to the detriment of his creditors will have no effect against them.

Chapter VI

Proof of Obligations

ARTICLE 376 (E.C. 389) PROOF OF OBLIGATION OR RELEASE FROM IT

The burden of proving an obligation lies on the creditor and that of proving a release on the debtor.

Section I

Documentary Evidence

ARTICLE 377 (E.C. 390 but necessity for proof of thumbmark by signature of two witnesses not included in E.C.)

Authentic Documents

1. An authentic document (64), is a document in which a public officer or a person entrusted with the performance of a public service records, in the manner prescribed by law and within the limits of his powers and competence, facts that have taken place in his presence or statements that have been made to him by the parties.

2. If the document does not fulfil the requirements of authenticity, it is valid as a signed document (65), provided that it bears the signatures, the seals, or the fingerprints of the parties. It is necessary to prove the authenticity of fingerprints that they should be affixed in the presence of two witnesses who shall sign the document.

(64) An authentic document, i.e., a document of record such as a proces-verbal.

(65) A signed document (acte sous seing prive) is an instrument which the parties hereto have drawn up, or caused to be drawn up, without the mediation of a public official.

ARTICLE 378 (E.C. 391) PROBATIVE FORCE OF AUTHENTIC DOCUMENT

An authentic document, unless it is legally established to be a forgery, has probative force erga omnes as regards matters therein recorded in respect of acts performed within the limits of his duties by the official who drew up the document, or in respect of matters performed by the parties in his presence.

ARTICLE 379 (E.C. 392) OFFICIAL COPIES OF AUTHENTIC DOCUMENT

1. When the original of an authentic document exists, official handwritten or photostat copies thereof have probative force as far as they conform to the original.

2. A copy is deemed to conform to the original, unless its accuracy is contested by one of the parties; in which case the copy will be checked with the original.

ARTICLE 380 (E.C. 393) PROBATIVE FORCE OF COPY

When the original of an authentic document does not exist, the copy has probative force in accordance with the following provisions:

(a) the first authentic copy, whether bearing the executory formula or not, has the same probative force as the original when its outward appearance does not give rise to any doubt that it does not conform to the original;

(b) the same validity is accorded to official copies of the first authentic copy, but each of the parties may demand that such copies be checked with the original authentic copy from which they were taken;

(c) official copies of copies taken from the first authentic copy may, in accordance with the circumstances of the case be regarded as merely informatory.

ARTICLE 381 (E.C. 394 but the word "seal" therein mentioned is not mentioned here)

SIGNED DOCUMENTS

A signed document is deemed to emanate from the person who signed it, unless he formally contests the writing, the signature or the fingerprint alleged to be his. His heirs or successors in title are not bound to contest, but may only declare on oath that they do not know that the writing or the signature or the fingerprint are those of their author.

ARTICLE 382 (E.C. 395 but the word "seal" therein mentioned is not mentioned here)
PROBATIVE FORCE OF SIGNED DOCUMENT

A signed document has no probative force as to its date as regards third parties until it has acquired an established date. A document acquires an established date (date certaine):

(a) from the day that it is inscribed in the register maintained for the purpose;
(b) from the day that its contents are mentioned in another document whose date is established;
(c) from the day that a visa is affixed to the document by a competent public official;
(d) from the day of the death of one of those whose admitted handwriting, signature, or fingerprint it bears, or from the day on which it has become impossible for any of them, as a result of incapacity, to write or to affix his fingerprint from the day of the establishing of existence of the document.

The Judge may, however, upon taking into account the circumstances, refuse to apply the provisions of this Article as regards discharges.

ARTICLE 383 (E.C. 396) LETTERS AND TELEGRAMS

1. Signed correspondence has the same probative force as signed documents.

2. The same probative force will apply to telegrams if the original, left at the office of despatch, is signed by the sender; a telegram is presumed to be a true copy of the original until the contrary is proved.

3. If the original of the telegram is destroyed, the telegram will be regarded as merely informatory.

ARTICLE 384 (E.C. 396) COMMERCIAL LEDGERS

1. Commercial books are not to be taken as proof against persons who are not traders. When, however, these books contain particulars as to supplies made by traders the Judge may, on the basis of these particulars and within the limits within which evidence by witnesses is admitted, call upon one or other of the parties to take the suppletory oath (66).

2. Commercial books have probative force against merchants. If these books are regularly kept the person who wishes to rely upon them for proof will not be allowed to use part of their contents and set aside that part of their contents that is contrary to his contention.

(66) The suppletory oath is an oath administered in the absence of evidence considered sufficient in law and is taken with a view of deciding the case.

ARTICLE 385 (E.C. 398) LEDGERS AND PRIVATE PAPERS

Ledgers and private papers have no probative force against the person from whom they emanate, except in the two following cases :

(a) when such a person states therein formally that he has been repaid a debt;
(b) when such a person states formally his intention that the contents of these papers shall take the place of a title in favour of a person for whom the entries establish a right.

ARTICLE 386 (E.C. 399) ENDORSEMENT OF DOCUMENT

1. An endorsement of discharge, entered on the title-deed of a debt, even though such endorsement is not signed by the creditor, constitutes a proof against the creditor as long as the title-deed of debt has never been out of his possession, unless he furnishes proof to the contrary.

2. An endorsement implying discharge, made in the handwriting of the creditor on the duplicate copy of the title-deed of a debt, or on a receipt in discharge in the hands of the debtor, also constitutes a proof against the creditor even if not signed by him.

Section II
Evidence by Witnesses

ARTICLE 387 (E.C. 400) EVIDENCE BY WITNESSES

1. In the absence of agreement or of a provision of the law to the contrary, commercial matters also excepted, evidence as to the existence of an act (67) or as to its extinction cannot be given by witnesses where the value involved exceeds ten Libyan pounds, or is not fixed.

2. The value of an obligation will be assessed as at the date on which the act has been concluded. The evidence of witnesses is, however, admitted if the value of the obligation exceeds ten Libyan pounds only as a result of the addition to the capital of interest and other accessory charges.

3. If the proceedings involve several claims arising from a number of sources, the evidence of witnesses will be permitted in respect of each of the claims whose value does not exceed ten Libyan pounds, although the total value of the claims exceeds ten Libyan pounds, and although they arise from dealings between the same parties or from transactions of the same nature. This rule also applies to all payments not exceeding ten Libyan pounds.

(67) For the meaning of the word "act" see Note (24).

ARTICLE 388 (E.C. 401) WHEN EVIDENCE OF WITNESSES NOT ADMISSIBLE

Evidence by witnesses is not admitted even if the value does not exceed ten Libyan pounds :

(a) when it is required to disprove or to go beyond the contents of a written document.
(b) if the object of the claim consists of the balance of or part of a right which can only be proved by documentary evidence.
(c) if one of the parties to the proceedings, having made a claim exceeding ten Libyan pounds, reduces his claim to an amount not exceeding that sum.

ARTICLE 389 (E.C. 402) COMMENCEMENT OF PROOF IN WRITING

1. When documentary evidence is required, evidence by witnesses may be allowed when there is a commencement of proof in writing.

2. Any written document, emanating from the party against whom the claim is made, tending to make the existence of the alleged act probable, is deemed to be a commencement of proof in writing.

ARTICLE 390 (Articles 2722 and 2723 of the I.C.C. modified)

ADDITIONAL STIPULATIONS

When it is alleged that additional stipulations relating to a document have been made after the said document has been drawn up, or that stipulations have been agreed to and which contravene the contents of that document, then the Judge may only permit evidence thereof by witnesses if it appears that by reason of the quality of the contracting parties or of the nature of the contract or of other circumstances it is possible that verbal additions or modifications might have occurred.

ARTICLE 391 (E.C. 403) SPECIAL RULES FOR ACCEPTANCE OF EVIDENCE OF WITNESSES

Evidence by witnesses is admissible in the place of documentary evidence:
(a) when documentary evidence cannot be obtained as a result of a material or moral bar;
(b) when the creditor has lost his written title to the claim as a result of a cause beyond his control (68).

(68) The exceptional cases in which evidence by witnesses is admitted in accordance with Article 391 are applicable in the cases of:

1. obligations which arise out of quasi-contracts, criminal offences and torts;

2. deposits which had to be made owing to a fire, a house falling down, a tumult or a shipwreck, and deposits made by travellers when living in an inn, regard being had to the position in which the parties stood to one another, and the circumstances of each case;

3. obligations entered into owing to unforeseen accidents when it was impossible to draw up a writing;

4. a creditor having lost his document of title which was his written proof, in consequence of an event which was unforeseen, or the result of force majeure.

Section III
Presumptions

ARTICLE 392 (E.C. 404) EFFECT OF A PRESUMPTION

A presumption of law relieves the party in whose favour the presumption exists of the necessity of producing any other evidence. This presumption of law, however, may be rebutted by evidence to the contrary, unless the law provides otherwise.

ARTICLE 393 (E.C. 405, but in E.C. "heirs and successors" not included in para. 1)

PRESUMPTION ARISING FROM FINAL JUDGMENT

1. Final Judgments are absolute proof of the right established by such Judgments, and no proof is admitted against the legal presumption resulting therefrom, provided that such Judgments refer to rights between the same parties acting in the same capacity or their heirs and successors and having the same object and the same consideration.

2. This presumption cannot be raised by the court of its own initiative.

ARTICLE 394 (E.C. 406) EFFECT OF CRIMINAL JUDGMENT OF CIVIL CASE

A penal decision only binds a Judge in a civil suit as regards the facts on which the Penal Court gave its decision and upon which the Penal Court had necessarily to prounounce Judgment.

ARTICLE 395 (E.C. 407) POWER OF JUDGE TO DRAW PRESUMPTIONS

Presumptions which are not provided for in law are left to the appreciation of the Judge. Proof by means of these presumptions should only be admitted in cases in which the law allows evidence by witnesses.

Section IV
Admissions

ARTICLE 396 (E.C. 408) DEFINITION

An admission is an acknowledgement made before the Court of a fact by a party against whom this fact has been alleged and in the course of the proceedings relating to such a fact.

ARTICLE 397 (Para. 1 E.C. 409 with slight modification.
Para. 2 Italian CC 2734 with slight modification.)
EFFECT OF ADMISSION

1. An admission is conclusive proof against him who makes it.

2. When an admission against the interest of the party making it is accompanied by other facts or circumstances which tend to restrict, modify, or extinguish the effects of the said admission, then shall the admission and what accompanies it constitute full evidence if the other party does not contest the truth of the facts or circumstances accompanying the admission; if these are contested it is for the Judge to assess the evidential value of the admission.

ARTICLE 398 EXTRA-JUDICIAL ADMISSION

Extra-judicial admissions made to an opposing party or to his representative shall be regarded as judicial admissions and have the same evidential value. If the admission is made to a third party or it is contained in a will its evidential value shall be within the discretion of the Judge. Extra-judicial admissions may not be proved by the evidence of witnesses if the said admissions relate to matters which the law does not permit to be proved by the evidence of witnesses.

Section V
The Oath (69)

(69) An oath in a legal proceeding is of two kinds (1) an oath that one of the parties has tendered to the other party which makes the result of the action depend upon what the party taking the oath swears to: it is called a decisive oath; (2) an oath which is tendered on his own initiative by the Judge to one of the parties is called a suppletory oath.

ARTICLE 399 (No exact equivalent in E. C., although similar provisions therein contained.)

THE DECISIVE OATH

1. The decisive oath may not be tendered nor tendered back to decide a matter concerned with rights of which the contending parties have not the disposal, nor a matter concerning an unlawful occurrence or relating to a contract the authenticity of which the law requires to be proved by written evidence or relating to a denial of an act which is shown by an official document to have occurred in the presence of a public official who himself drew up the said document.

2. The party to whom the oath is tendered may tender it back to the other party; nevertheless, the oath may not be tendered back if it relates to a matter in which the two contending parties did not participate but is solely personal to him to whom the oath is tendered.

ARTICLE 400 (E. C. 411) OBJECT OF THE OATH

1. The decisive oath cannot be tendered in respect of a fact contrary to public order. The fact which is the object of the oath must relate to the individual to whom the oath is tendered; if the fact does not so relate the oath is valid only insofar as he has knowledge of it.

2. The decisive oath may be tendered at any stage of the proceedings.

ARTICLE 401 (E. C. 412) RETRACTION OF OATH

A party who has tendered or who has tendered back the oath cannot retract once the other party has agreed to take the oath.

ARTICLE 402 (E. C. 413) PROOF OF FALSITY OF OATH

When the oath tendered or tendered back has been taken, the other party is not entitled to prove that the oath is false. When, however, such an oath is established to be false by a decision of a Penal Court, the party damaged as a result of the false oath may claim compensation without prejudice to his right of recourse against the judgment rendered against him.

ARTICLE 403 (E. C. 414) REFUSAL OF OATH

The party to whom the oath is tendered and who has refused it without tendering it back to the other party, and the other party to whom the oath has been tendered back and who has refused to take it, will lose his case.

ARTICLE 404 (E. C. 415) THE SUPPLETORY OATH

1. The Judge may, on his own initiative, tender the suppletory oath to either party with a view to deciding on the merits of the claim or on the amount of his award.

2. The Judge may tender the oath only when the claim is neither completely proved, nor without any proof.

ARTICLE 405 (E.C. 416) TENDERING BACK OF SUPPLETORY OATH

The party to whom the Judge has tendered the suppletory oath cannot tender back the oath to the other party.

ARTICLE 406 (E.C. 417) TENDERING OF SUPPLETORY OATH TO ASSESS VALUE OF CLAIM

1. The Judge may only tender the suppletory oath to the plaintiff as regards the amount of the claim when it is impossible to fix this amount in any other way.

2. The Judge, even in this case, will fix a maximum amount up to which the plaintiff should be believed on his oath.

BOOK TWO
SPECIFIC CONTRACTS

Chapter I
Contracts as Regards Ownership

Section I
Sale

1. Sale in General
Elements of Sale

ARTICLE 407 (E.C. 418) DEFINITION

Sale is a contract whereby the vendor binds himself to transfer to the purchaser the ownership of a thing or any other proprietary right in consideration of a price in money.

ARTICLE 408 (E.C. 419) KNOWLEDGE OF A THING SOLD

1. The purchaser must have a sufficient acquaintance with the thing sold. This acquaintance will be deemed sufficient if the contract contains the description of the thing sold and its essential qualities, so that it may be identified.

2. The statement in a deed of sale that the purchaser is acquainted with the thing deprives him of the right to claim annulment of the sale on the ground of want of acquaintance with the thing, unless he proves fraud on the part of the vendor.

ARTICLE 409 (E.C. 420) SALE BY SAMPLE

1. When the sale is made according to sample, the thing sold should conform to the sample.

2. If the sample deteriorates or perishes while in custody of one of the contracting parties, even if it was not his fault, it is incumbent upon that party, whether he is vendor or buyer, to establish that the thing is or is not in conformity with the sample.

ARTICLE 410 (E.C. 421) SALE ON TRIAL

1. In a sale upon trial the purchaser has the option either to accept or refuse the thing sold, but the vendor is bound to allow the purchaser to make the trial. If the purchaser refuses the thing sold, he must give notice of his refusal within the time agreed or, in the absence of agreement, within a reasonable time to be fixed by the vendor. When this time has elapsed the silence of the purchaser who had the opportunity to try the thing sold, is equivalent to acceptance.

2. A sale upon trial is deemed to have been made subject to a suspensive condition of acceptance of the thing sold, unless it appears from the agreement or from the circumstances that the sale was made subject to a resolutory condition.

ARTICLE 411 (E.C. 422) SALE BY TASTE

In a sale made subject to tasting, the purchaser may accept the thing sold if he sees fit, but he must declare his acceptance within the time fixed by the agreement or by custom. The sale will be considered complete only from the date of such declaration.

ARTICLE 412 (E.C. 423) ESTABLISHING THE PRICE

1. The method of establishing the price may be confined to the indication of the basis on which the price will be ultimately fixed.

2. When it is agreed that the price will be the market price, the market price will, in case of doubt, be that at the place where and at the time when the thing sold should be delivered to the purchaser; if there is no market at the place of delivery, reference should be made to the market price at the place at which the prices are customarily deemed applicable.

ARTICLE 413 (E.C. 424) PRICE NOT FIXED

When the contracting parties have not fixed a price for the thing sold the sale shall not be void if the circumstances show that the parties intended to adopt the current trade price or the price which they have usually applied in their dealings with one another.

ARTICLE 414 (E.C. 425) SALE OF IMMOVABLE BELONGING TO PERSONS WITHOUT LEGAL CAPACITY

1. When an immovable belonging to a person who is legally incapable has been sold with a "lesion" (70), of more than one-fifth of its value, the vendor will have a right of action with a view to make up the price to four-fifths of the normal price.

2. In order to ascertain whether the lesion was of more than one-fifth, the value of the immovable at the time of the sale should be ascertained.

ARTICLE 415 (E.C.426) PRESCRIPTION

1. The right to bring an action for a supplement of price on the ground of lesion is prescribed within three years from the time the legal incapacity ceases, or from the date of the death of the owner of the immovable sold.

2. Such proceedings do not operate to the prejudice of third parties in good faith who have acquired a real right on the immovable sold.

ARTICLE 416 (E.C. 427) OBJECTION TO SALE BY PUBLIC AUCTION

This action supplement of price on the grounds of lesion does not lie in respect of sales by public auction conducted in accordance with the provisions of this law.

Obligations of the Vendor

ARTICLE 417 (E.C. 428) OBLIGATION OF VENDOR TO TRANSFER RIGHT TO THING SOLD

The vendor is bound to perform everything necessary to transfer the right to the thing sold to the purchaser, and to abstain from all acts that might render this transfer impossible or difficult.

ARTICLE 418 (E.C. 429) SALE IN BULK

When goods are sold in bulk, ownership is transferred to the purchaser in the same way as ownership of a definite and ascertained thing. There is sale of goods in bulk even when the amount of the price depends on the extent weight, or measure of the goods sold being ascertained.

(70) See Note (26).

ARTICLE 419 (E.C. 430 Article mentioned in paragraph 2 is 224 in E.C.)

SALE ON CREDIT

1. In a credit sale the vendor may stipulate that the transfer of the ownership to the purchaser is subject to integral payment of the price, even if the thing sold has been delivered.

2. If the price is payable by instalments, the contracting parties may agree that the vendor may retain a part of the price by way of damages, should the sale be cancelled for non-payment of all the instalments. The Judge may, however, according to circumstances, reduce the amount of damages agreed by applying the provisions of paragraph 2 of Article 227.

3. When all the instalments have been paid, the transfer of the ownership of the thing sold shall be deemed to have taken place as from the date of sale.

4. The provisions of the three preceding paragraphs are applicable even if the contracting parties have described the contract of sale as a contract of lease.

ARTICLE 420 (E.C. 431) DELIVERY OF THING SOLD

The vendor is bound to deliver the thing sold to the purchaser in the state in which it was at the time of the sale.

ARTICLE 421 (E.C. 432) ACCESSORIES OF THING SOLD

Delivery includes delivery of the accessories of the thing sold and of everything which, according to the nature of things, local custom and the intention of the parties, was appropriated permanently for the use of the thing.

ARTICLE 422 (E.C. 433) QUANTITY OF THING SOLD

1. When the quantity of the thing sold is fixed in the contract, the vendor, subject to any agreement to the contrary, is liable for any deficiency in such quantity in accordance with custom. The purchaser has not, however, the right to demand cancellation of the contract by reason of such deficiency, unless he establishes that the deficiency is so great that if he had known of it he would not have entered into the contract.

2. If, on the contrary, the quantity exceeds that indicated in the contract, and if the price has been fixed by unit, the purchaser must, when the object of the purchase cannot be divided, make up the price, unless the excess is very great, in which case he may demand cancellation of the contract, all subject to an agreement to the contrary.

ARTICLE 423 (E.C. 434) PRESCRIPTION IN CASE OF EXCESS OR DEFICIENCY IN THING SOLD

In a case of deficiency or excess in the thing sold, the right of the purchaser to apply for a reduction of the price or for the cancellation of the contract and the right of the vendor to claim that the price be made up are both prescribed within one year from the date of the actual delivery of the thing sold.

ARTICLE 424 (E.C. 435) HOW DELIVERY IS MADE

1. Delivery consists in placing the thing sold at the disposal of the purchaser in such a way that he can take possession of and enjoy it without hindrance, even if he does not take effective delivery thereof, provided the vendor informs him that the thing is at his disposal. Delivery is effected in accordance with the nature of the thing sold.

2. Delivery may be completed by the mere fact of agreement between the parties when the thing sold was in possession of the purchaser prior to the sale or if the vendor retains the thing sold in his possession after the sale by virtue of some reason other than that of ownership.

ARTICLE 425 (E.C. 436) SENDING OF THING SOLD TO PURCHASER

When the thing sold must be sent to the purchaser, delivery will not be effective, subject to an agreement to the contrary, until it reaches him.

ARTICLE 426 (E.C. 437) DESTRUCTION OF THING SOLD

If the thing sold perishes before delivery as a result of a cause beyond the control of the vendor, the sale shall be dissolved and the price refunded to the purchaser, unless he was summoned to take delivery before the loss.

ARTICLE 427 (E.C. 438) DETERIORATION OF THING BEFORE DELIVERY

If the value of the thing sold is diminished by deterioration before delivery, the purchaser shall have the option either of applying for the cancellation of the sale, if the diminution is so great that the sale would not have taken place if the diminution had happened before the contract was concluded, or of upholding the sale at a reduced price.

ARTICLE 428 (E.C.439) VENDOR'S WARRANTY

The vendor warrants the purchaser against disturbance in his enjoyment of the thing sold both totally and partially, whether such disturbance is caused by his act or that of a third party having a right over the thing sold at the time of the sale enforceable against the purchaser. The vendor is bound by his warranty, even if the right of the third party has been established after the sale, provided that it was derived from the vendor himself.

ARTICLE 429 (E.C. 440) ACTION FOR REVENDICATION

1. When an action for revendication in respect of the thing sold is brought against the purchaser, the vendor, upon receipt of notice of the action, shall, according to the circumstances and in

conformity with the provisions of the Civil and Commercial Procedure Code, join as a co-defendant with the purchaser, or take his place as defendant, in the action.

2. If notice is given in due time, the vendor who has not joined in the action is liable under his warranty, unless he proves that the judgment given in the action is the result of fraud or of gross negligence on the part of the purchaser.

3. If the purchaser does not notify the vendor of the action brought against him in due time and is dispossessed by a judgment that has become final, he shall be deprived of his right of recourse under the warranty, if the vendor establishes that, had he joined in the action, he would have succeeded in obtaining the dismissal of the action for revendication.

ARTICLE 430 (E.C. 441) RIGHT OF PURCHASER TO WARRANTY

The right of a purchaser to warranty exists even if he has acknowledged, in good faith, the third party's claim or has entered into a compromise with him without awaiting a decision of the Court, if he has, in due time, given notice of the action to the vendor and has, without result, called upon him to take his place in the action, subject, always, to proof by the vendor that the third party's claim is unfounded.

ARTICLE 431 (E.C. 442) AVOIDANCE OF REVENDICATION BY PURCHASER

When the purchaser has avoided total or partial dispossession of the thing sold by paying a sum of money or by performing some other prestation, the vendor may free himself from the consequences of warranty by refunding to the purchaser the sum paid, or the value of the prestation performed, together with legal interest and all expenses.

ARTICLE 432 (E.C. 443 Article quoted in para. 4 is 440 in E.C.)

TOTAL DISPOSSESSION

In the case of total dispossession the Purchaser may claim from the vendor:

1. the value of the thing sold at the time of dispossession, together with legal interest from that time;

2. the value of the profits derived from the thing sold that the purchaser has been obliged to restore to the person entitled to the thing;

3. all sums usefully spent which he cannot claim from the person entitled to the thing, together with expenditure of a superfluous character (71) if the vendor acted in bad faith;

(71) Compare Art. 1635 of the French Civil Code: "If the vendor fraudulently sells property which belongs to a third party he is bound to repay the purchaser all money expended by him on the property, even when such expenditure was only incurred to add to the purchaser's pleasure and to increase the property's amenities."

4. all cost incurred in the action upon the warranty and the action of revendication, with the exception of those costs that the purchaser could have avoided by notifying the vendor of the action of revendication, in accordance with Article 429;

5. and generally, compensation for the losses sustained and profits missed as a result of the dispossession of the thing sold;

Unless in all these cases the purchaser's action against the vendor is based on a demand for dissolution or for annulment of the sale.

ARTICLE 433 (E.C. 444) PARTIAL DISPOSSESSION

1. In case of partial dispossession, or if the thing sold is encumbered with a charge, the purchaser, if the loss is of such a nature that, had he been cognizant thereof, he would not have entered into the contract, may claim from the vendor the sums provided for in the preceding Article, provided that he returns to the vendor the things sold and the profits derived therefrom.

2. When the purchaser prefers to retain the thing sold or when the loss sustained by him does not attain the degree of gravity defined in the preceding paragraph, he has only the right to apply for compensation in respect of the loss he has sustained as a result of the dispossession.

ARTICLE 434 (E.C. 445) VARIATION OF WARRANTY AGAINST DISPOSSESSION

1. The contracting parties may, by special agreement, increase the warranty against dispossession, restrict it or stipulate that the sale is without warranty.

2. The vendor is presumed to have stipulated that he does not warrant a purchaser against a servitude if it was apparent or disclosed by him to the purchaser.

3. A clause that the sale is without warranty or restricting the warranty against dispossession is null and void if the vendor intentionally conceals the rights of a third party.

ARTICLE 435 (E.C. 466) DISPOSSESSION WITHOUT WARRANTY

1. Notwithstanding a clause excluding warranty, a vendor remains liable for any dispossession as the result of the act of a third party, to refund to the purchaser the value of the thing sold at the time of dispossession, unless he can prove that the purchaser knew at the time of the sale of the grounds of dispossession, or that he purchased the thing at his own risk and peril.

ARTICLE 436 (E.C. 447) THING SOLD NOT POSSESSING QUALITIES GUARANTEED

1. The vendor is liable under this warranty, when, at the time of delivery, the thing sold does not possess the qualities the existence of which he guaranteed to the purchaser, or when the thing sold has defects diminishing its value or usefulness for the purpose for which it was intended, as shown by the contract or the destined use of the thing. The vendor is answerable for these defects, even if he was ignorant of their existence.

2. The vendor, however, is not answerable for the defects of which the purchaser was aware at the time of the sale or which he could have discovered himself had he examined the thing with the care of a reasonable person, unless the purchaser proves that the vendor has affirmed to him the absence of these defects or fraudulently concealed them from him.

ARTICLE 437 (E.C. 448) CUSTOMARY DEFECTS

The vendor is not liable for defects which are customarily tolerated.

ARTICLE 438 (E.C. 449) OBLIGATION OF PURCHASER TO ASCERTAIN CONDITION OF THING SOLD

1. When the purchaser has taken delivery of the thing sold he must ascertain its condition as soon as he is able to do so in accordance with common usage. If he discovers a defect for which the vendor is answerable, he must give notice thereof to the vendor within a reasonable time, failing which he will be deemed to have accepted the thing sold.

2. In case, however, of defects that cannot be discovered by means of normal inspection, the purchaser shall, upon the discovery of the defect, at once give notice thereof to the vendor, failing which he will be deemed to have accepted the thing sold with its defects.

ARTICLE 439 (E.C. 450. Article quoted in text is 444 in E.C.)

NOTICE OF DEFECTS TO VENDOR

When the purchaser has given notice to the vendor of the defect in the thing in due time he will be entitled to bring an action on the warranty in accordance with Article 433.

ARTICLE 440 (E.C. 451) ACTION ON WARRANTY EXISTS

An action on a warranty exists even if the thing sold has perished, whatever may be the cause.

ARTICLE 441 (E.C. 452) PRESCRIPTION IN CASES OF ACTIONS UPON WARRANTIES

1. An action on a warranty is prescribed in one year from the time of delivery of the thing sold, even if the purchaser discovers the defect after the expiration of this delay, unless the vendor agrees to be bound by the warranty for a longer period.

2. The vendor, however, cannot avail himself of the prescription of one year if it is proved that he has fraudulently concealed the defect from the purchaser.

ARTICLE 442 (E.C. 453) VARIATION OF WARRANTY

The contracting parties may, by specific agreement, increase, restrict or abolish the warranty.

Nevertheless, any clause abolishing or restricting the warranty is void if the vendor intentionally and fraudulently conceals the defects of the thing sold.

ARTICLE 443 (E.C. 454) GUARANTEE AND AUCTION SALE

No guarantee shall be given for defects in items disposed of by judicial sale nor by administrative sale where such sale is carried out by auction.

ARTICLE 444 (E.C.455) FITNESS OF THING SOLD FOR THE WORK

When a vendor has warranted the proper working of the thing sold for an agreed period of time, the purchaser, in the case of a defect subsequently appearing in the thing sold, must, under pain of forfeiture of his right to the warranty and subject to any agreement to the contrary, give notice to the vendor within one month from the date of the appearance of the defect and commence an action within six months from the date of notification.

Buyer's Obligations

ARTICLE 445 (E.C. 456) PLACE OF PAYMENT

1. Unless otherwise agreed upon or dictated by custom, the price shall be due for payment at the place of delivery of the sold items.

2. Should payment not be due at the time of delivery, the same shall be effected at the seller's place of residence at such time when payment is due.

ARTICLE 446 (E.C. 457) TIME OF PAYMENT AND RETENTION OF PRICE

1. Subject to a clause or custom to the contrary, the price is payable at the time delivery of the thing sold is made.

2. When the purchaser is disturbed in his enjoyment by a third party invoking a right existing prior to the sale or derived from the vendor, or if he is in danger of being dispossessed of the thing sold, he may, subject to an agreement to the contrary, retain the price until the disturbance in his enjoyment or the danger of dispossession has ceased. The vendor may, however, in such a case, demand payment of the price upon his supplying security.

3. The provisions of the preceding paragraph will also apply if the purchaser has discovered a defect in the thing sold.

ARTICLE 447 (E.C. 458) INTEREST UPON THE PRICE

1. Subject to an agreement or custom to the contrary, the vendor is not entitled to legal interest on the price, unless he has placed the purchaser in default by a formal summons, or unless the thing sold is productive of fruits or other profits and he has delivered the thing sold to the purchaser.

2. Subject to an agreement or usage to the contrary, the purchaser acquires the revenues and increase in value of, and is liable for all charges in connection with, the thing sold from the time the sale is concluded.

ARTICLE 448 (E.C. 459. Article quoted in para. 2 is 273 in E.C.)

RETENTION OF THING SOLD BY VENDOR

1. When the whole or part of the price is payable immediately, the vendor, unless he grants the purchaser a delay for payment after the date of the sale, may retain the thing sold until he obtains payment of the amount due, even if the purchaser has offered a mortgage or security.

2. The vendor may also retain the thing sold, even if the agreed date of payment has not fallen due, if the purchaser loses the benefit of the term in accordance with the provisions of Article 260.

ARTICLE 449 (E.C. 460) DESTRUCTION OF THING SOLD WHEN RETAINED

If the thing sold perishes while in possession of the vendor while exercising his right of retention, the purchaser is liable for the loss unless the thing sold perishes as a result of an act of the vendor.

ARTICLE 450 (E.C. 461) SALE OF COMMODITIES

In the case of the sale of commodities or other movable property, when a term is agreed for payment of the price and for taking delivery, the sale will, subject to an agreement to the contrary, and at the option of the vendor, be ipso facto dissolved without any summons being necessary if the price is not paid upon due date.

ARTICLE 451 (E.C. 462) COSTS OF DEED OF SALE

In the absence of an agreement or usage to the contrary, the costs of the deed of sale, stamp duties, transcription fees and all other expenses are borne by the purchaser.

ARTICLE 452 (E.C. 463) TIME AND PLACE OF DELIVERY IF NOT APPOINTED

In the absence of agreement or usage indicating the place and time of delivery, the purchaser is bound to take delivery of the thing sold at the place where it was at the time of the sale and to remove it without delay, subject to the time necessary for such removal.

ARTICLE 453 (E.C. 464) COSTS OF DELIVERY OF THING SOLD

Subject to usage or to an agreement to the contrary, the costs of taking delivery of the thing sold are borne by the purchaser.

2. Different Forms of Sale

Sale with a Right of Redemption

ARTICLE 454 (E.C.465) SALE WITH RIGHT OF REDEMPTION VOID

When a vendor reserves to himself at the time of the sale the right to take back the thing sold, within a fixed time, the sale will be void (72).

(72) In the E.C. the Article rendering void all sales with a right of redemption is a change in the law. Compare the old Egyptian Civil Code, Article 338 as follows: "There are two kinds of sale with a right of redemption to be distinguished:
1. that made for the purpose of giving to the purchaser the immovable or other thing, sold subject to a right of redemption, as a pledge for the debt of the vendor.
2. that made with a reservation that the vendor may recover the thing sold on re-establishing the previous state of things in the event of his changing his mind as to the sale."

ARTICLE 455 (E.C. 466) EFFECT OF SALE OF PROPERTY BELONGING TO ANOTHER

1. When a person sells a definite and ascertained thing of which he is not the owner, the purchaser may demand the annulment of the sale. This rule also applies when the thing sold is an immovable whether the deed has been transcribed or not.

2. Such a sale cannot, in any case, have any effect as against the owner of the thing sold, even if the purchaser has ratified the contract.

ARTICLE 456 (E.C. 467) RATIFICATION OF SALE BY OWNER

1. If the owner ratifies the sale, the contract will become binding on him and valid as regards the purchaser.

2. The sale will also become valid as regards the purchaser if the ownership of the thing sold devolves upon the vendor subsequently to the conclusion of the contract.

ARTICLE 457 (E.C. 468) DAMAGES

When the annulment of the sale has been pronounced in Court in favour of a purchaser who was unaware that the thing sold did not belong to the vendor, he shall be entitled to claim damages, even if the vendor acted in good faith.

ARTICLE 458 (E.C. 469) ASSIGNMENT OF A LITIGIOUS RIGHT

1. When the owner of a litigious right has assigned it to a third party for valuable consideration, the debtor, against whom the right has been assigned, may extinguish the right assigned by paying to the assignee the actual price paid by him, together with expenses and interest accrued on the price from the date of the payment of the price.

2. The right is deemed to be litigious if there is an action in Court or serious controversy in respect thereof.

ARTICLE 459 (E.C. 470) EXCEPTIONAL CONDITIONS

The provisions of the preceding Article do not apply in the following cases:

(a) when the litigious right forms part of a group of properties sold in bulk for a single price;
(b) when the litigious right is indivisible amongst several heirs or co-owners and one sells his share to the other ;
(c) when a debtor has assigned to his creditor the litigious right in payment of his debt;
(d) when the litigious right is a right burdening an immovable and such right is sold to a third party in possession of the immovable.

ARTICLE 460 (E.C. 471) WHEN LITIGIOUS RIGHTS MAY NOT BE BOUGHT

No member of the magistracy or of the "Parquet", no lawyer, greffier or bailiff of a Court may, under pain of nullity of the sale, purchase, either in his own name or in the name of an intermediary, in whole or in part, any litigious rights coming within the jurisdiction of the Court in the district of which he exercises his functions.

ARTICLE 461 (E.C. 472) LAWYERS BANNED FROM DEALING WITH THEIR CLIENTS IN LITIGIOUS RIGHTS

No lawyer may, under pain of nullity, either in his own name or in the name of an intermediary, enter into an agreement with his client with regard to a litigious right, when he has undertaken to defend his right.

Sale of an Inheritance

ARTICLE 462 (E.C. 473) EXTENT OF WARRANTY ON SALE OF AN INHERITANCE.

A person who sells an inheritance without giving particulars thereof, only warrants that he is an heir, unless otherwise agreed.

ARTICLE 463 (E.C. 474) EFFECT OF SALE OF INHERITANCE ON RIGHTS OF THIRD PARTIES

In the sale of an inheritance, the transfer of rights comprised therein will have no effect as regards third parties, unless the necessary formalities for the transfer of each of these rights have been fulfilled.

ARTICLE 464 (E.C. 475) OLBIGATIONS OF THE VENDOR

The vendor, if he has encashed debts or sold any of the property forming part of the inheritance, must reimburse the purchaser up to the amount he has received, unless he has inserted in the contract of sale an express clause of non-reimbursement.

ARTICLE 465 (E.C. 476) OBLIGATIONS OF THE BUYER

The purchaser must reimburse the vendor whatever he may have paid in respect of the debts of the inheritance and pay him anything that is due to him by the estate, subject to any agreement to the contrary.

Sales During a Person's Last Illness

ARTICLE 466 (E.C.477. Article mentioned in para.3 is 916 of E.C.) EFFECT OF SALE IN LAST SICKNESS

1. A sale made by a person during his last illness, to an heir or to a person who is not an heir, at

a price inferior to the value of the thing sold at the time of his death, is valid against the heirs if the difference between the value of the thing sold and the price paid does not exceed one-third of the value of the inheritance, including the thing sold.

2. If this difference exceeds one-third of the value of the inheritance, the sale is only valid against the heirs with regard to the excess over one-third of the value, if the heirs ratify the sale or if the purchaser pays to the estate the amount necessary to make up the two-thirds.

3. The provisions of Article 920 apply to a sale made during a person's last illness.

ARTICLE 467 (E.C. 478) SPECIAL PROVISION IN RESPECT OF THIRD PARTY IN GOOD FAITH

The provisions of the preceding Articles do not apply to the prejudice of a third party in good faith who has acquired for valuable consideration a real right over the property sold.

Sale by a Representative to Himself

ARTICLE 468 (E.C. 479) GENERAL RULE

Subject to the provisions of any other laws, no person who represents another person by virtue of an agreement, a provision in the law or an order of a competent authority may purchase, either in his own name or in the name of an intermediary, even at a public auction, property entrusted to him for sale in his representative capacity, unless he has been authorized to do so by an order of the Court.

ARTICLE 469 (E.C. 480) BROKERS AND EXPERTS

No brokers or experts may purchase in their name or in the name of an intermediary goods which they have been entrusted to sell or to appraise.

ARTICLE 470 (E.C. 481) CONFIRMATION OF SALES REFERRED TO IN TWO PRECEDING ARTICLES BY PERSON ON WHOSE BEHALF SALE MADE

A sale in the cases referred to in the two preceding Articles becomes valid if it is confirmed by the person on behalf of whom the sale was carried out.

Section II
Exchange

ARTICLE 471 (E.C. 482) DEFINITION

Exchange is a contract by which the contracting parties mutually bind themselves to transfer to the other by way of exchange the ownership of a thing other than money.

ARTICLE 472 (E.C. 483) COMPENSATION FOR DIFFERING VALUES

If the things exchanged have different values in the estimation of the contracting parties, the difference may be compensated by the payment of an equivalent sum of money.

ARTICLE 473 (E.C. 484) EXPENSES

In the absence of an agreement to the contrary, the principal and incidental expenses of a contract of exchange shall be borne by the parties in equal shares.

ARTICLE 474 (E.C.485) PROVISIONS AS TO EXCHANGE

The provisions governing sale apply to exchange as far as the nature of exchange allows. Each one of the exchanging parties is deemed to be the vendor of the thing given by him in exchange and the purchaser of the thing received in exchange.

Section III

Gifts

1. Elements of a Gift

ARTICLE 475 (E.C.486) DEFINITION

1. A gift is a contract by which the donor disposes, without consideration, of property belonging to him.

2. A donor may, without being divested of the intention of making a gift, impose upon the donee the performance of a specific obligation.

ARTICLE 476 (E.C.487) CREATION OF GIFT

1. A gift is not complete until it is accepted by the donee or his representative.

2. If the donor is the natural or legal guardian of the donee, he may accept the gift on his behalf and take delivery thereof.

ARTICLE 477 (E.C.488) FORM OF GIFT

1. The gift may be made by an authentic document under pain of nullity, unless it is made in the form of some other contract.

2. A gift of movables, however, may be completed by delivery to the donee, without an official instrument being necessary.

ARTICLE 478 (E.C.489) VOLUNTARY EXECUTION OF NULL GIFT

The donor, or his heirs, who voluntarily give effect to a gift which is null by reason of defect in form, cannot demand the restitution of what they have delivered.

ARTICLE 479 (E.C.490) PROMISE OF GIFT

A promise to make a gift is not binding unless it is made by an authentic document.

ARTICLE 480 (E.C.491. Articles quoted are 466 and 467 in E.C.)
GIFT OF PROPERTY OF THIRD PARTY

If the gift is of a definite and specific thing which does not belong to the donor, it is governed by the provisions of Articles 455 and 456.

ARTICLE 481 (E.C.492 with addition) GIFT OF FUTURE PROPERTY (73)

A gift of future property is void (74), except a gift of produce not yet gathered.

(73) Property which is not actually in the power of the donor, or to which he has no right or no actual or potential right of action by which he can claim it or expect to acquire it, is called "future property". If he has a right of action by which he might acquire the property, or if it is property which will belong to him on the happening of a certain event, it is not "future" property. Thus a gift of the crop which the donor's land may produce the following year is not a gift of future property.

(74) E.C.492 does not include what follows here.

2. Effects of a Gift

ARTICLE 482 (E.C.493) DELIVERY TO DONEE

When the donee has not taken possession of the thing given, the donor is under an obligation to deliver it to him. The provisions as to the delivery of a thing sold shall, in such a case, apply.

ARTICLE 483 (E.C.494) WARRANTY OF DONOR AGAINST DISPOSSESSION FROM GIFT

1. Unless otherwise agreed a donor is under no obligation or warranty against dispossession unless he has intentionally hidden the cause of dispossession or unless the gift has been made for valuable consideration. In the first case, the Judge will award the donee equitable compensation for the prejudice he has suffered. In the second case, the donor is only bound up to the value of the consideration paid by the donee.

2. In a case of dispossession, the donee is subrogated into the rights and actions of the donor.

ARTICLE 484 (E.C.495) OBLIGATIONS OF DONOR

1. A donor does not warrant that the thing given is free from defects.

2. If, however, the donor has intentionally hidden a defect or if he has warranted that the thing donated is free of defects, he will be liable to compensate the donee for loss caused by this defect. He will also be bound to pay compensation if the gift is made for valuable consideration, provided that the amount of compensation does not exceed the value of the consideration given by the donee.

ARTICLE 485 (E.C.496) EXTENT OF RESPONSIBILITY OF DONOR

A donor is only liable for his intentional acts or for his gross negligence.

ARTICLE 486 (E.C.497) OBLIGATIONS OF DONEE

A donee is bound to perform the consideration imposed upon him, whether such consideration is in favour of the donor, a third party, or in the public interest.

ARTICLE 487 (E.C.498) DEFICIENCY IN VALUE OF GIFT

If it appears that the value of the gift is less than that of the consideration imposed, the donee shall only be liable to perform the consideration to the extent of the value of the thing donated.

ARTICLE 488 (E.C.499) OBLIGATION OF DONEE TO PAY DEBT

1. If the donor stipulates that the donee shall, in consideration of the gift, discharge his debts, the donee shall only be liable, unless otherwise agreed, to discharge debts existing at the time of the gift.

2. If the thing donated is burdened with a real right securing the debt due by the donor or by a third party, the donee shall be liable, unless otherwise agreed, to pay this debt.

3. Revocation of Gifts

ARTICLE 489 (E.C. 500) GROUNDS OF REVOCATION

1. A donor may revoke a gift if the donee consents to his so doing.

2. If the donee does not consent to the revocation, the donor may apply to the Court for authority to revoke the gift whenever he has reasonable grounds in support and when there is no obstacle to the revocation.

ARTICLE 490 (E.C. 501) ACCEPTABLE GROUNDS FOR REVOCATION

There are, in particular, reasonable grounds for the revocation of a gift :
(a) if the donee has failed in his duties towards the donor or one of his relatives, and such failure constitutes serious ingratitude on his part;
(b) if the donor has become unable to maintain himself in accordance with his social position or to meet an obligation to pay alimony which he is legally bound to pay to another person;
(c) in the event of a child being born to the donor after the donation, and still being alive at the time of the revocation, or if the donor had a child which he believed dead at the time of the donation, which child is discovered to be still alive.

ARTICLE 491 (E.C. 502) CONDITIONS PREVENTING REVOCATION

An application for the revocation of a gift shall be rejected if one of the following obstacles exists:
(a) if there is an inherent increase of the thing given, involving an increase in value thereof; but if this obstacle disappears, the right of revocation is renewed;
(b) if one of the parties to the gift dies;

(c) if the donee has definitely alienated the thing given; if, however, such alienation is only partial, the donor may revoke the gift as to the part remaining;

(d) if the gift is made by one spouse to another, even if the donor wishes to revoke the gift after the dissolution of the marriage;

(e) if the gift is made for the benefit of a relative with whom marriage is prohibited;

(f) if the thing given has perished while in possession of the donee, whether by the act of the donee, by a cause beyond his control not attributable to him, or by use; if, however, the loss is partial, the revocation may be for the part remaining;

(g) if the donee has supplied valuable consideration for the gift;

(h) if the gift constitutes alms or an act of charity.

ARTICLE 492 (E.C. 503) EFFECTS OF REVOCATION

1. A gift revoked by mutual consent or by a judgment is deemed to be null and void.

2. The donee is only liable for the restitution of the fruits as from the date of the agreement of revocation or from the date of the commencement of legal proceedings. He has the right to claim repayment of all necessary expenses that he has incurred and also of sums usefully spent by him but only up to the amount of any increase in value of the thing donated.

ARTICLE 493 (E.C. 504) RESPONSIBILITY OF DONOR AND DONEE

1. If, without the consent of the donee or without a decision of the Court, the donor takes back the thing given, he is responsible to the donee for the loss of the thing donated whether such loss occurs from his act, from a cause beyond his control which is not attributable to him, or as a result of the use of the thing.

2. If the revocation of the gift is pronounced by a judgment and the thing donated perishes while in the possession of the donee, after he has been formally summoned to hand back the thing, the donee is responsible for loss even if it resulted from a cause beyond his control.

Section IV

Partnership

ARTICLE 494 DEFINITION

Partnership is a contract whereby two or more persons bind themselves to contribute property or services for the exercise of an economic undertaking and to share the result in profit.

ARTICLE 495 JOINT OWNERSHIP FOR ENJOYMENT OF PROPERTY

Joint ownership which is established or maintained for the sole purpose of the enjoyment of one or more things is governed by Article 825 et sequens of this Code.

ARTICLE 496 KINDS OF CIVIL PARTNERSHIPS

Partnerships created for purposes which differ from commercial undertakings are subject to the succeeding provisions (of this Code), save where the partners agree to form a partnership on the pattern of one of the purely commercial partnerships, in which case these partnerships shall be subject to the provisions of the special commercial law affecting that kind of partnership which it has been elected to form, including registration in the Commercial Register, save that they shall not be liable to bankruptcy.

1. Elements of Partnership

ARTICLE 497 SIMPLE CIVIL PARTNERSHIPS

Simple civil partnerships are not subject to specified forms or procedure, save in so far as where the nature of the property jointly contributed to the partnership so demands.

ARTICLE 498 VARIATION OF CONTRACT OF PARTNERSHIP

In the absence of agreement to the contrary, variations in the contract of partnership may not be made, save by the consent of all the partners.

ARTICLE 499 (E.C. 508) CONTRIBUTIONS

In the absence of agreement or custom to the contrary, the contributions of the partners are presumed to be equal and to consist of the ownership of the property brought in and not merely of its enjoyment.

ARTICLE 500 (E.C. 509) PROHIBITED CONTRIBUTIONS

The influence or the credit of a partner cannot alone constitute his contribution.

ARTICLE 501 (E.C. 510) CASH CONTRIBUTIONS

A partner who has undertaken to contribute a sum of money and who does not pay his sum in the partnership is liable, without recourse to legal proceedings or to any formal demand, to payment of interest from the date that his contribution fell due, apart from payment, in addition to compensation for any loss, if such compensation is due.

ARTICLE 502 (E.C. 511) CONTRIBUTIONS OF REAL RIGHTS OR USE OF PROPERTY

1. If the contribution of a partner consists of a right of ownership, of an usufruct, or of any other real right, the provisions as to sale shall apply as regards warranties against loss, dispossession, hidden defects or deficiencies.

2. If, however, the contribution consists merely of the use of the property, the provisions as to lease apply as regards the above warranties.

ARTICLE 503 (E.C. 512) CONTRIBUTION OF SERVICES

1. If the contribution of a partner consists of his services, he shall carry out the services he has undertaken to perform and render an account of the profits realized from the date of the formation of the partnership as a result of the services he has undertaken as his contribution.

2. In the absence of an agreement to the contrary, he is not bound, however, to contribute to the partnership patents which he has obtained.

ARTICLE 504 (E.C. 513) CONTRIBUTION OF DEBTS DUE BY THIRD PARTIES

If the contribution of a partner consists of debts due by third parties, his obligation to the partnership is only extinguished by the recovery of these debts. He is also liable for damages if the debts are not paid when they fall due.

ARTICLE 505 (E.C. 514) DIVISION OF PROFIT AND LOSS

1. If the share of each of the partners in the profits and the losses of the partnership is not fixed in the deed of partnership, their respective shares shall be proportional to their respective contributions in the capital of the partnership.

2. If the deed of partnership only fixes the share of each partner in the profits, the same proportion shall apply as regards the losses, and reciprocally if only the share in the losses is fixed in the partnership deed.

3. If the contribution of one of the partners consists only of his services, his share in the profits and the losses is estimated in accordance with the profits that the partnership realizes as a result of his services. If, in addition to his services, a partner has made a contribution in money or in kind, he will be entitled to a share in respect of his services and another share in respect of the contribution he has made in addition to his services.

ARTICLE 506 (E.C. 515) WHEN CONTRACT OF PARTNERSHIP VOID

1. If it is agreed that one of the partners shall not participate in the profits or losses of the partnership, the partnership deed is void.

2. A partner who only contributes his services may be relieved by agreement from participation in the losses of the partnership, provided that no remuneration is allowed to him in respect of his services.

ARTICLE 507 USE OF PARTNERSHIP PROPERTY FOR PURPOSES OUTSIDE THOSE OF THE PARTNERSHIP.

A partner may not use partnership property for purposes outside those of the partnership, save with the consent of the other partners.

2. Management of the Partnership

ARTICLE 508 (Similar Provisions in E.C. 520) INDEPENDENT MANAGEMENT

1. Unless otherwise agreed, each partner has the right of managing the partnership independently of the other partners.

2. If several partners have the management, independently of each other, each of the managing partners has the right to object to an act contemplated by another partner before the performance of such act.

3. The objection shall be decided upon by the majority of the partners reckoned in accordance with the shares of each partner in the profits.

ARTICLE 509 JOINT MANAGEMENT

1. If the management is entrusted to several partners jointly, the consent of all such managing partners is necessary in order to bring into effect acts of the partnership.

2. If it was agreed that for specified acts the consent of the majority of the partners is necessary, such majority shall be determined in accordance with the last paragraph of the preceding Article.

3. In the cases set forth in this Article the individual managing partners may not perform any act by themselves, save in case of urgency in avoiding injury to the partnership.

ARTICLE 510 DISMISSAL OF MANAGING PARTNER

1. Except for justifiable reasons, a managing partner appointed by the agreement for partnership cannot be dismissed.

2. If the appointment of the managing partner was by separate instrument then is the dismissal subject to the provisions as to mandate.

3. For justifiable reasons each partner may demand the dismissal judicially.

ARTICLE 511 RIGHTS AND DUTIES OF MANAGING PARTNERS

1. The rights and duties of managing partners are regulated by the provisions as to mandate.

2. Managing partners are jointly and severally responsible to the partnership to perform the duties imposed upon them by law and by the agreement for partnership.

3. However, this responsibility does not extend to a managing partner who is proved innocent of negligence.

ARTICLE 512 SUPERVISION BY PARTNERS NOT MANAGING PARTNERS

1. The partners who do not participate in the management have the right to be informed by the managing partners regarding the affairs of the partnership, and they are entitled to have access to documents relating to the management and to a statement of account upon completion of transactions for the object of which the partnership was created. Any agreement to the contrary is void.

2. If the performance of the affairs of the partnership continues for a period greater than one year then shall the partners have the right to a statement as to the management at the end of each year, save where the agreement for partnership establishes a different period.

ARTICLE 513 RIGHT TO RECEIVE PROFITS

Save where otherwise agreed, each partner has the right to receive his share of the profits after the approval of the statement of accounts.

3. Effects of Partnership

ARTICLE 514 (E.C. 521) DUTIES OF PARTNERS

1. Each partner shall abstain from any activity prejudicial to the interests of the partnership or contrary to the object for which the partnership was formed.

2. He shall watch over the interests of the partnership as if they were his own, unless he has been appointed a manager on remuneration, in which case he shall not exercise less care than would a prudent man.

ARTICLE 515 (E.C. 522) INTEREST ON SUMS DUE TO OR FROM THE PARTNERSHIP

1. A partner who takes or retains a sum of money belonging to the partnership will, without any legal summons or formal demand, be liable for interest on the sum from the day he took it or retained it, and will also be liable for the payment of damages should loss arise thereby.

2. A partner who advances money to the partnership from his private funds or incurs in good faith without imprudence trifling expenses for the benefit and on behalf of the partnership, is entitled to interest thereon from the partnership from the date of payment thereof.

ARTICLE 516 (E.C. 523, 1st para. only) RESPONSIBILITY OF PARTNERS FOR DEBTS OF PARTNERSHIP

If the assets of the partnership do not cover its debts, the partners shall, in the absence of an agreement providing for another division, be liable for these debts from their own property, each in proportion to his share in the losses of the partnership. Any agreement relieving a partner from liability in respect of the partnership's debts is void.

ARTICLE 517 RIGHT OF CREDITORS TO ENFORCE THEIR RIGHTS ON PARTNERSHIP PROPERTY

1. Creditors of the partnership may enforce their rights against the property of the partnership and the partners who acted in the name and on account of the partnership shall be personally jointly and severally liable for the obligations of the partnerships, and save where there is agreement to the contrary, the other partners shall also be liable.

2. Such an agreement to the contrary must be brought to the notice of third parties by adequate means or otherwise the right to plead limitation of liability or the exception of joint and several status shall be lost.

ARTICLE 518 INVENTORY OF PROPERTY OF PARTNERSHIP

A partner who is called upon for payment of partnership debts may, even when the partnership is in liquidation, demand that an inventory estimating the property of the partnership be first taken, indicating the property upon which the creditor may satisfy his demand without difficulty.

ARTICLE 519 LIABILITY OF NEW PARTNER

Whoever joins a partnership already established is liable with the other partners for the obligations of the partnership existing prior to his becoming a partner.

ARTICLE 520 SEPARATE CREDITOR OF PARTNER

1. The separate creditor of a partner may enforce his rights against the profits due to his debtor so long as the partnership is in existence and may take measures to protect his rights against the share due to the debtor during liquidation.

2. If the property of the debtor apart from that in the partnership is insufficient to satisfy the rights of the creditor the latter may at any time demand that the share of the debtor in the partnership be liquidated. The said share shall be liquidated within three months of the date of the demand of the creditor unless the liquidation of the partnership is decided upon.

ARTICLE 521 COMPENSATION

A debt due by a third party to the partnership cannot be compensated by a claim of the said third party against a partner.

4. Dissolution of Partnership

ARTICLE 522 CAUSES OF DISSOLUTION

A partnership is dissolved:
(a) by determination of the period fixed for its duration;
(b) when the object for which it was formed is attained or has become impossible of attainment;
(c) by destruction of its property or grave injury thereto to the extent that no further advantage can be obtained by the continuance of the partnership;
(d) by the unanimous decision of the partners to dissolve it;
(e) when the plurality of partners ceases and such plurality is not re-established within six months;
(f) for other reasons provided for in the agreement of partnership.

ARTICLE 523 TACIT EXTENSION OF PARTNERSHIP

1. The period for which the partnership is created is tacitly and indefinitely prolonged if the partners continue to act in the business of the partnership after the period fixed therefor is terminated.

2. The creditor of one of the partners may object to this extension and his objection shall stay any effects of the continuance of the partnership upon his rights.

ARTICLE 524 E.C.530 amended) WHEN DISSOLUTION MAY BE ADJUDGED

The Judiciary may decree the dissolution of the partnership upon the application of one of the partners if the other partners are in breach of their duties or for other grave reasons for which the partners are not responsible. Any agreement to the contrary shall be void.

5. Termination of the Partnership Relation in Respect of One Partner Only

ARTICLE 525 DEATH OF A PARTNER

Unless the agreement of partnership provides otherwise, upon the death of a partner the other partners must liquidate his share in favour of his heirs, save where it is preferred to liquidate the partnership or to continue with the heirs themselves partaking therein if these heirs so agree.

ARTICLE 526 WITHDRAWAL OF PARTNER

1. Each partner may withdraw from the partnership where no definite period for its continuance is provided for, as also if the partnership is for the duration of the life of one of the partners.

2. He may also withdraw from the partnership under the conditions provided for in the agreement of partnership or for any justifiable reason. Under the two circumstances cited in the first paragraph of this Article, the partner must give notice of his intention to the other partners three months at least before his withdrawal.

ARTICLE 527 EXPULSION OF PARTNER AND PROCEDURE THEREFOR

1. A partner may be expelled for grave reasons connected with his breach of the obligations imposed upon him by the law or the agreement for partnership or if he loses his legal capacity, or if he is interdicted from exercising his calling or any appointment, or if he is sentenced to a penalty which involves, ever although temporarily, his interdiction from public office.

2. A partner who has contributed his services for something to benefit the partnership may also be expelled if he becomes incapable of carrying out his services or if the thing he has contributed is destroyed as the result of causes for which the managing partners are not responsible.

3. A partner may also be expelled if his obligation is to transfer property and that property is destroyed before the ownership thereof is acquired by the partnership.

4. The decision to expel a partner shall be by the majority of the partners; the partner to be expelled is not included in that majority. The expulsion shall take effect thirty days after the notification of expulsion has been served upon the partner to be expelled.

5. The partner expelled may object to the decision for expulsion in the Court of First Instance which may stay execution thereof.

ARTICLE 528 EXPULSION BY OPERATION OF LAW

1. A partner who is declared bankrupt is expelled by operation of law.

2. As also is a partner expelled by operation of law where one of his personal creditors has obtained liquidation of his share in accordance with Article 520 hereof.

ARTICLE 529 LIQUIDATION OF SHARE OF RETIRING PARTNER AND THE LIABILITY OF HIM AND HIS HEIRS

1. In the case of dissolution in respect of one partner only, he and his heirs are only entitled to the value of his share; the liquidation shall be made upon the basis of the financial state of the partnership at the time of dissolution.

2. In the case of current transactions the retiring partner or his heirs participate in the profit and loss therefrom. Payment of the share due to the retiring partner must be paid within six months, commencing from the day of dissolution. The retiring partner or his heirs shall remain liable to third parties in respect of the obligations of the partnership until the day upon which it is said that dissolution takes place. Proper measures must be taken to bring the dissolution to the knowledge of third parties, failing which dissolution may not be pleaded against third parties who, without negligence, had no knowledge thereof.

6. Liquidation and Partition of the Partnership Property

ARTICLE 530 (E.C. 532) RULES AS TO LIQUIDATION

The liquidation and the partition of the partnership property is carried out in the manner laid down by the partnership deed. When the partnership deed is silent, the following provisions shall be applied.

ARTICLE 531 RETENTION OF MANAGING PARTNERS OF THEIR POWERS UPON DISSOLUTION

After dissolution the managing partners retain their power of management, limited to urgent transactions, until the necessary steps for liquidation are taken.

ARTICLE 532 (E.C. 534) BY WHOM LIQUIDATION IS CARRIED OUT

1. The liquidation will be carried out either by all the partners or by one or more liquidators appointed by the majority of the partners, as the case may be.

2. If the partners do not agree on the appointment of a liquidator, such liquidator will, upon the application of one of the partners, be appointed by the Judge.

3. In case of nullity of partnership, the Court will appoint a liquidator and will decide upon the method of liquidation upon the application of any interested party.

4. Until a liquidator is appointed, the managing partners shall be deemed, as far as third parties are concerned, to be the liquidator.

ARTICLE 533 (E.C. 535) POWERS OF LIQUIDATOR

1. A liquidator may not undertake new business on behalf of the partnership, unless it is necessary for the purpose of terminating the old business.

2. He may sell movables and immovables belonging to the partnership by auction or by private treaty, unless his powers in this respect have been restricted by the instrument by which he was appointed.

ARTICLE 534 (E.C. 536) PARTITION OF PARTNERSHIP PROPERTY

1. The partnership assets are divided between all the partners after payment of the creditors, deduction of amounts required to cover debts that have not fallen due or are subject to litigation and repayment of disbursements or loans that may have been made by one of the partners for the benefit of the partnership.

2. Each partner shall take a sum equal to the value of his contribution to the capital of the partnership as recorded in the partnership deed, or, if not recorded in the partnership deed, as its value at the time the contributions was brought to the partnership, unless he has only contributed his services, the usufruct or the mere use of the thing that he has brought to the partnership.

3. The balance, if any, will be distributed between the partners proportionately to each partner's share in the profits.

4. If the partnership assets are not sufficient to cover the repayment of the partners' contribution, the loss is shared between the partners proportionately to each partner's share in the losses.

ARTICLE 535 RIGHT OF RESTITUTION

1. Partners who have contributed things for use and enjoyment have the right to the return of such things in the condition in which they may be.

2. If such things are destroyed or suffer damage by causes which may be charged to the managing partners, then the partners who have contributed them may demand compensation thereof against the property of the partnership without prejudice to their rights of action against the managing partners.

ARTICLE 536 (E.C. 537) RULES AS TO PARTITION

The rules laid down with reference to the partition of the property held in common, apply to partitions between partners.

Section V
Loans and Annuities

1. Loans for Consumption

ARTICLE 537 (E.C.538) DEFINITION

A loan for consumption is a contract by which the lender undertakes to transfer to the borrower the ownership of a sum of money or other fungibles upon condition that the borrower returns, at the end of the loan, a thing equal in amount, kind and quality.

ARTICLE 538 (E.C.539) DELIVERY OF THING OBJECT OF CONTRACT

1. The lender must deliver to the borrower the thing which is the object of the contract and cannot claim the return of its equivalent until the end of the loan.

2. If the thing perishes before its delivery to the borrower, the loss falls on the lender.

ARTICLE 539 (E.C. 540) RULES TO WHICH LOAN FOR CONSUMPTION IS SUBJECT

In the event of dispossession, the provisions relating to sale will apply if the loan is made for valuable consideration; otherwise the provisions relating to loan for use will apply.

ARTICLE 540 (E.C. 541) HIDDEN DEFECTS

1. When the loan is made without valuable consideration, and hidden defects appear in the thing, the borrower, if he prefers to retain the thing, will only be liable to refund the value of the defective thing.

2. When the loan is made for valuable consideration, or when it is made without valuable consideration but the lender has deliberately hidden the defects, the borrower may demand either that the defect be made good or that the defective thing be replaced by a thing without defects.

ARTICLE 541 (E.C. 542) INTEREST

The borrower is under liability to pay the agreed interest as it falls due; in the absence of an agreement as regards interest, the loan is deemed to be without consideration.

ARTICLE 542 (E.C.543) TERMINATION OF LOAN FOR CONSUMPTION

The loan comes to an end upon the expiration of the term agreed upon.

ARTICLE 543 (E.C. 544) TERMINATION OF LOAN BY BORROWER

If interest is agreed, the debtor may, after six months from the date of the loan, give notice of his intention to terminate the contract and to restitute the thing taken on loan, provided that the restitution takes place within a term not exceeding six months of the date of the notice. In such a case the debtor shall be liable to pay the interest due for the six months following the notice. He will not, in any case, be bound to pay interest or to perform a prestation of any kind by reason of the fact that payment is made before due date. The right of the borrower to effect restitution cannot be forfeited or limited by agreement

2. Annuities

ARTICLE 544 (E.C. 545) CREATION OF ANNUITY

1. An undertaking may be given to supply in perpetuity a person and after him his successors with a periodical prestation consisting of a sum of money or a fixed quantity of other fungibles. This obligation may be assumed by contract for or without valuable consideration, or by will.

2. When the prestation is made by contract for valuable consideration, it is subject, as regards the rate of interest, to the rules governing loans on interest.

ARTICLE 545 (E.C. 546) REDEMPTION OF ANNUITY

1. An annuity is essentially redeemable at any time at the will of the debtor. Any agreement to the contrary is void.

2. It may be agreed, however, that the redemption shall not take place during the lifetime of the annuitant or before a certain length of time which shall never exceed fifteen years.

3. The right of redemption cannot in any case be exercised until notice thereof has been given and then after one year from the date of the notice.

ARTICLE 546 (E.C. 547) COMPULSORY REDEMPTION

The debtor may be forced to redeem in the following events :
(a) if, in spite of a formal summons, he does not pay the annuity for two consecutive years;
(b) if he fails to supply the creditor with the securities that he has promised or if such securities disappear and he does not provide other securities in their place;
(c) if he becomes bankrupt or insolvent.

ARTICLE 547 (E.C. 548) HOW REDEMPTION MADE

1. If the annuity is purchased by payment of a sum of money, the redemption is made by the repayment of the amount in full or such lesser amount as may be agreed upon.

2. In other cases, redemption is exercised by the payment of a sum of money, on which the interest calculated at the legal rate corresponds to the amount of the annuity.

Section VI

Compromise

1. Elements of Compromise

ARTICLE 548 (E.C. 549) DEFINITION

Compromise is a contract by which two parties put an end to a dispute that has arisen, or prevent a dispute that is expected to arise, by the mutual surrender of part of their respective claims.

ARTICLE 549 (E.C. 550) CAPACITY TO CONTRACT FOR COMPROMISE

In order to effect a compromise the parties must have legal capacity to dispose for valuable consideration of the rights which are the objects of the compromise.

ARTICLE 550 (E.C. 551) WHEN COMPROMISE NOT PERMISSIBLE

A compromise cannot be made on any question touching the status of individuals or public policy, but a compromise may be made with regard to proprietary interests arising out of the status of individuals or out of a penal offence.

ARTICLE 551 (E.C. 552) PROOF

A compromise can only be established by a written document or by an official proces-verbal.

2. Effect of Compromise

ARTICLE 552 (E.C. 553) EXTINGUISHMENT OF RIGHTS AND CLAIMS

1. Compromise terminates the disputes in respect of which the compromise is made.

2. It extinguishes the rights and claims which either of the parties have finally renounced.

ARTICLE 553 (E.C. 554) DECLARATORY EFFECT

Compromise has a declaratory effect as regards the rights in respect of which the compromise is made. This declaratory effect is limited specifically to litigious rights.

ARTICLE 554 (E.C. 555) INTERPRETATION OF COMPROMISE

The wording of the renunciation contained in the compromise must be strictly interpreted. The renunciation, no matter how worded, applies to those rights only which form the precise object of the dispute settled by the compromise.

3. Nullity of Compromise

ARTICLE 555 (E.C.556)(para. 1 thereof) NULLITY OF COMPROMISE

1. A compromise cannot be impugned on the ground of a mistake in law.

2. A compromise is void if based upon documents subsequently found to be forged; as also is void a compromise in respect of a suit which has already been terminated by a judgment which must be executed and of which one of the contracting parties was aware.

ARTICLE 556 (E.C. 557) COMPROMISE INDIVISIBLE

1. A compromise is indivisible. The nullity of one part of a compromise involves the nullity of the whole contract.

2. This rule does not apply, however, when it follows, from the wording of the contract or from the circumstances, that the parties agreed that the various parts of the compromise are independent the one of the other.

Chapter II

Contracts Relating to the Use of Things

Section I

Leases

1. Leases Generally

Elements of a Lease

ARTICLE 557 (E.C. 558) DEFINITION

A lease is a contract by which the lessor undertakes to enable the lessee to enjoy a specific thing for a certain time in return for a fixed rent.

ARTICLE 558 (E.C. 559) LEASE BY MANAGER

In the absence of a provision of the law to the contrary, a person who has only a right of management cannot, without the consent of the competent authority, enter into a lease for a term exceeding three years. If the lease is granted for a longer term, it will be reduced to three years.

ARTICLE 559 (E.C. 560) LEASE OF USUFRUCT

A lease granted by a usufructuary, unless ratified by the bare owner, ends when the usufruct is extinguished, subject to the delay provided for giving notice of evacuation and the time required to gather in the annual crop.

ARTICLE 560 (E.C. 561) RENT

Rent may consist either of money or of any other prestation.

ARTICLE 561 (E.C. 562) ASSESSMENT OF RENT

If the parties have not agreed the amount of the rent or the manner in which the rent shall be fixed, or if the amount of the rent cannot be established, it must be based on the current rent for other similar properties.

ARTICLE 562 TERM OF TENANCY AGREEMENT

Should the parties not determine the term of tenancy, the tenancy shall be deemed to have been agreed upon for the following periods:

(a) Unfurnished houses and places allocated for the performance of professional, commercial or industrial activities - one year, taking into account local customs;

(b) Furnished houses and rooms for such period as determined for the payment of rental;

(c) Moveable properties for such period as determined for the payment of the rental;

(d) For furniture supplied by the lessor to equip a place located in a town for the period determined for the rental of the premises in question.

EFFECTS OF A LEASE

ARTICLE 563 (E.C. 564) DELIVERY OF LEASED PROPERTY BY LESSOR

The lessor is bound to deliver to the lessee the leased property and its accessories in a condition suitable for the purpose for which it is intended, in accordance with the agreement between the parties or with the nature of the property.

ARTICLE 564 (E.C. 565) DEFECTS IN PROPERTY LEASED

1. If the leased property is delivered to the lessee in such a condition that it is unfit for the use for which it is leased, or if its usefulness if appreciably diminished, the lessee may demand either the resiliation of the lease or a reduction of the rent equivalent to the loss of use; in both cases he is entitled to claim compensation, if compensation is due.

ARTICLE 565 (E.C. 566) SPECIAL RULES AS TO DELIVERY OF PROPERTY LEASED

The rules laid down as regards the obligation of delivery of the thing sold, especially as to time and place of delivery, as to extent, weight or measure, and as to determining its accessories, are applicable to the obligation of delivery of the leased property.

ARTICLE 566 (E.C.567 with omissions) OBLIGATIONS OF LESSOR

1. The lessor is bound to maintain the leased property in the state in which it was at the time of delivery. He must make, during the continuance of the lease, all repairs which may become necessary, except "lessee's" repairs (see Article 581 hereof).

2. The lessor is also bound to do such plastering and white-washing of the roofs as may be necessary, and to clear wells, cesspools and drains.

3. The lessor is responsible for charges and taxes due on the leased property. The costs of electricity, gas, water and other requirements for personal use are paid by the lessee.

4. The above rules only apply in the absence of agreement to the contrary.

ARTICLE 567 (E.C.568)(The words "through no fault of the lessee" in para.2 are not contained in E.C.) BREACH OF OBLIGATIONS BY LESSOR

1. If a lessor, having been summoned, delays the performance of the obligations mentioned in the previous Article, the lessee may, without prejudice to his right to claim resiliation of the lease or a reduction of rent, obtain authority of the Court to perform them himself and deduct the cost from the rent.

2. In the case of immediate repairs or minor repairs for which the lessor is responsible, whether resulting from a defect existing at the time the premises were taken over by the lessee or happening subsequently through no fault of the lessee, the lessee may, without the authority of the Court, carry them out and deduct the cost thereof from the rent, if the lessor, having been summoned to do so, does not carry them out in a reasonable time.

ARTICLE 568 (E.C.469 but the words "i.e., a delay which does not affect the business or activity of the lessee" therein contained are omitted here) DESTRUCTION OF LEASED PROPERTY

1. If, during the course of the lease, the leased property is totally destroyed, the lease is, ipso facto, terminated.

2. If, as a result of a cause not imputable to the lessee, the leased property is only partially destroyed or deteriorates to such an extent that it becomes unfit for the use for which it was leased, or if such a use is appreciably diminished, the lessee may, if the lessor does not restore the leased property to its original condition within a reasonable time, claim, according to the circumstances, either a reduction of the rent or the resiliation of the lease, without prejudice to his right to perform himself the obligations of the lessor in accordance with the provisions of the preceding Article.

3. In the two preceding cases, the lessee cannot claim compensation if the loss or deterioration arises from a cause not imputable to the lessor.

ARTICLE 569 (E.C.570) IMMEDIATE REPAIRS

1. The lessee must not prevent the lessor from making immediate repairs required for the preservation of the leased property, but if such repairs cause a complete or partial loss of enjoyment, the lessee may claim, according to the circumstances, resiliation of the lease or a reduction of the rent.

2. If, however, the lessee continues to occupy the premises until the repairs are completed, he will forfeit his rights to claim resiliation of the lease.

ARTICLE 570 (E.C. 571) ABSTENTION OF LESSOR FROM DISTURBANCE OF LESSEE

1. The lessor shall abstain from doing anything which may disturb the lessee in his enjoyment of the leased property, and shall not make any alterations to the property or to its accessories that diminish such enjoyment.

2. The lessor not only warrants the lessee against his own acts and against those of his servants but also against any disturbance or damage based on a lawful claim by any other lessee or by any successor in title of the lessor.

ARTICLE 571 (E.C. 572) RIGHTS OF THIRD PARTY

1. If a third party claims to have rights incompatible with those derived by the lessee from the agreement of lease, the lessee shall forthwith give notice to the lessor of such a claim and shall be entitled to demand that he be dismissed from the case, in which event the proceedings will be taken solely against the lessor.

2. If, as a result of such a claim, the lessee is effectively deprived of the enjoyment to which he is entitled in accordance with the agreement of lease, he may, in accordance with the circumstances, claim resiliation of the lease or a reduction of rent together with payment of damages if damages are due.

ARTICLE 572 (E.C. 573) PLURALITY OF LESSEES

1. When there are several lessees of the same property, the lessee who, without fraud, first entered into possession will have preference. If a lessee of an immovable property has, in good faith, effected transcription of his lease, before another lessee has entered into possession or before the renewal of his lease, such lessee will have preference.

2. In the absence of reasons giving preference to one lessee, the only recourse of a lessee in respect of any right not enjoyed by him is a claim for damages.

ARTICLE 573 (E.C. 574) ACTS OF A GOVERNMENT AUTHORITY

If, as a result of an act lawfully done by a Government Authority, the enjoyment of the property leased is appreciably diminished, the lessee may, in accordance with the circumstances, and unless otherwise agreed between the parties, claim resiliation of the lease or a reduction of rent; if the grounds for the act of such Government Authority are the result of an act imputable to the lessor, the lessee may claim payment of damages.

ARTICLE 574 (E.C. 575) TRESPASS OF THIRD PARTIES

1. A lessor does not warrant the lessee against trespass by a third party who does not claim a right over the leased property; this shall not, however, affect the right of the lessee to take action in his name against such third party for damages and to take all other possessory actions.

2. It, however, the trespass is not in any way imputable to the lessee and is sufficiently serious to deprive him of the enjoyment of the leased property, the lessee may, in accordance with the circumstances, claim resiliation of the lease or a reduction of rent (75).

(75) Compare Article 1616 et sequens, Quebec Civil Code.

ARTICLE 575 (E.C. 576) WARRANTY AGAINST DEFECTS

1. Subject to any agreement to the contrary the lessor warrants the lessee against all defects which prevent or appreciably diminish the enjoyment of the property, but not against those defects that are customarily tolerated, and is responsible for the lack of qualities which he specifically warranted to exist or which are essential to the intended use of the property.

2. The lessor, however, does not warrant the lessee against defects of which the lessee was informed or of which he was aware at the time of the conclusion of the contract.

ARTICLE 576 (E.C. 577) EFFECT OF WARRANTY AGAINST DEFECTS

1. If the leased property is found to have a defect against which the lessee has been warranted by the lessor, the lessee may, in accordance with the circumstances, claim resiliation of the lease or reduction of the rent. The lessee may also call upon the lessor to make good the defect or do so himself at the cost of the lessor, if the cost thereof is not an excessive burden on the lessor.

2. If the defect caused any damage to the lessee, the lessor shall be liable to pay compensation, unless the lessor can establish that he was not aware of the defect.

ARTICLE 577 (E.C. 578) FRAUD OF LESSOR

Any agreement excluding or limiting the warranty against disturbance or defects is void if the lessor has fraudulently hidden the cause of such warranty.

ARTICLE 578 (E.C. 597) USE OF LEASED PROPERTY

The lessee must use the leased property in the manner agreed. In the absence of any agreement, he must use the property in accordance with the purpose for which it is designed.

ARTICLE 579 (E.C. 580) ALTERATION TO LEASED PROPERTY

1. The lessee may not, without the permission of the lessor, make any alteration to the leased property unless no damage is thereby occasioned to the lessor.

2. If the lessee makes alterations to the leased property in excess of the limits prescribed in the preceding paragraph, he may be compelled to reinstate the property in its original condition and to pay compensation if compensation is due.

ARTICLE 580 (E.C. 581) INSTALLATION OF PUBLIC SERVICES

1. The lessee may install in the leased property, unless the lessor can show that the installations endanger the safety of the building, water, electric light, gas, telephone, wireless and other like installations, provided that the manner in which such installations are made is not contrary to general practice.

2. If the intervention of the lessor is necessary for the completion of any of these installations, the lessee may call upon the lessor to intervene, on condition that he undertakes to pay the expenses incurred by the lessor in this connection.

ARTICLE 581 (E.C.582) LESSEE'S REPAIRS

In the absence of an agreement to the contrary, the lessee is bound to carry out lessee's repairs in accordance with the general usage (76).

(76) Compare Article 1754 and 1755 of the French Civil Code as follows:
"1754. The following repairs are lessee's repairs, and must be done by him, unless there is a clause exempting him from them in the lease. Those which, by the custom of the place, are tenant's repairs, inter alia, repairs to fireplaces, chimney breasts, sides and top of mantelpieces, the plaster of the bottom of walls of rooms and other places used for living in up to a metre from the ground; repairs to the stone and tiled floors when only part of the floor is broken; repairs to glass in windows, unless they have been broken by hail or by other extraordinary accident, as an act of God, for which the tenant is not liable; repairs to the doors, windows, shutters to houses or for closing shops, hinges, bolts and locks.
"1755. Repairs known as lessee's repairs have not to be done by the tenant when they are required only as the result of old age or the act of God."

ARTICLE 582 (E.C.583) DUTIES OF LESSEE

1. The lessee shall use and preserve the leased property with the care of a reasonable person.

2. The lessee is responsible for any deterioration of or loss to the leased property during his enjoyment thereof which is not the result of normal use (77).

(77) Compare Article 1627 of the Quebec Civil Code as follows:
"1627. The lessee is responsible for injuries and loss which happen to the thing leased during his enjoyment of it unless he proves that he is without fault."

ARTICLE 583 (E.C.584) DAMAGE RESULTING FROM FIRE

1. The lessee is responsible for damage to the leased property by fire, unless he can establish that the cause thereof was not imputable to him (78).

(78) By Article 1733 of the French Civil Code the lessee can free himself from responsibility by proving one of the three following facts:
1. that the fire was caused by a fortuitous event or by force majeure; for example by lightning.
2. that the fire was due to an inherent fault of construction, for example, a defective chimney.
3. that the fire spread from a neighbour's house.

Some French writers, supported by a certain number of decisions, suggest that this list is not limitative, and that the lessee is entitled to prove any fact that discharges him from responsibility. But the general teaching is that the list of causes given in Article 1733 is restrictive, and only by proving one of them is the lessee freed from responsibility.

2. When the building is occupied by several lessees, including the landlord if he lives on the premises, they are each responsible for the fire, each in proportion to the part he occupies, unless it is proved that the fire started in the part occupied by one of them, in which case that one alone will be responsible.

ARTICLE 584 (E.C. 585) NOTIFICATION OF DAMAGE BY LESSEE

The lessee must forthwith notify the lessor of all matters that require his intervention, such as urgent repairs, the discovery of defects, encroachments and disturbances or damage by third parties to the leased property.

ARTICLE 585 (E.C. 586) PAYMENT OF RENT

1. The lessee must pay the rent at the agreed times and, in the absence of agreement, at times established by the custom of the place where the property is situated.

2. In the absence of an agreement or local custom to the contary, the rent will be paid at the domicile of the lessee.

ARTICLE 586 (E.C.587) PRESUMPTION OF PAYMENT OF RENT

The payment of a term's rent establishes a presumption (79), subject to proof to the contrary, that former terms have been paid.

(79) In the E.C. the words "in favour of the payee" are inserted between "establishes" and "a presumption".

ARTICLE 587 (E.C.588) SECURITY FOR RENT

Unless the rent is paid in advance or unless the lessee provides other guarantees, the lessee of a house, warehouse, shop or similar establishment or of agricultural land, is bound, in the absence of an agreement to the contrary, to stock the leased property with furniture, goods, crops, cattle or implements of sufficient value to secure the rent (80).

(80) In the E.C. Art.588 it is laid down that the security must be for two years or for the period of the lease if less than two years. This is omitted from the Libyan Code.

ARTICLE 588 (E.C. 589) LIEN OF LESSOR UPON MOVABLES

The lessor has, as warranty for all amounts due to him under the agreement of lease, a lien on all the attachable movables stocking the leased property, while they are subject to the lessor's right of privilege, even when they do not belong to the lessee. The lessor has the right to object to their removal and, if they are removed notwithstanding his objections or without his knowledge, to claim their recovery from their possessor even in good faith, subject always to the rights of such possessor thereon.

2. The lessor cannot exercise his rights of retention or of recovery when the movables have been removed to meet the professional requirements of the lessee or in accordance with customary requirements of daily life, or if the movables remaining on the leased property or already recovered are sufficient fully to cover the rent.

ARTICLE 589 (E.C. 590) RESTITUTION OF LEASED PROPERTY

The lessee is bound, upon the expiration of the lease, to restitute the leased property. If he retains it unlawfully, he must pay compensation to the lessor on the basis of the rental value of the property and of the loss suffered by the lessor.

ARTICLE 590 (E.C. 591) STATE OF RELEASED PROPERTY UPON ITS RESTITUTION

1. The lessee is bound to restitute the leased property in the condition in which it was at the time he took delivery thereof, subject to loss or deterioration due to a cause not imputable to him.

2. If no proces-verbal or inventory setting out particulars of the property was drawn up at the time of delivery, the lessee is presumed, subject to proof to the contrary, to have received the property in good condition.

ARTICLE 591 (E.C. 592) IMPROVEMENT IN LEASED PROPERTY

1. Where the lessee introduces into the leased property buildings or plantations or other improvements which enhance the value of the tenement, the lessor shall be bound to repay to the lessee his expenses on such improvements or the amount by which the value of the tenement was enhanced unless there be an agreement to the contrary.

2. Where such improvements were made without knowledge of the lessor notwithstanding his opposition, he may ask the lessee to remove them. He may further ask for compensation in respect of the harm which was caused to the property as a result of such removal where compensation is justified.

3. Where the lessor chooses to retain such improvements in consideration of paying one of the aforesaid amounts, the Court may allow him some time to pay.

ARTICLE 592 (E.C.593) RIGHT OF LESSEE TO SUB-LET OR ASSIGN

1(a). The lessee may, in the absence of an agreement to the contrary, assign his lease or sub-let the whole or any part of the leased property.

1(b). If the lease is subject to a law which controls the rent or makes the renewal of the lease compulsory on the part of the lessor, the principal lessee may not assign his lease or sub-let the leased property without the written consent of the lessor. This provision does not apply to cases where part of the property is being sub-let, provided the principal lessee in fact occupies part of the leased property.

2. Sub-leases concluded prior to the effectiveness of this law shall remain in force if the remaining period covered by the sub-lease does not exceed two years. If such period exceeds two years, the sub-lease shall become subject to the provisions of this law after the lapse of two years from the date of its effectiveness.

ARTICLE 593 (E.C. 594) EFFECT OF PROHIBITION OF SUB-LEASING

1. A prohibition of sub-letting implies a prohibition of assignment and vice-versa.

2. When, in the case of a lease of an immovable property in which an industrial or commercial establishment has been created, circumstances have compelled the lessee to sell such industrial or commercial establishment, the Court may, notwithstanding the condition prohibiting sub-letting, decide to maintain the lease in force if the purchaser furnishes adequate security and the lessor suffers no real prejudice thereby.

ARTICLE 594 (E.C. 595) GUARANTEE ON ASSIGNMENT

When the lease is assigned, the principal lessee remains guarantor for the performance of the assignee's obligation.

ARTICLE 595 (E.C. 596) DUTIES OF SUB-LESSEE

1. A sub-lessee is answerable directly to the lessor for the amounts that he, the sub-lessee, owes to the lessee as from the time a summons is served on him by the lessor.

2. A sub-lessee cannot set up against the lessor payments made by him in advance to the principal lessee, unless they were made before the summons, in accordance with custom or a formal agreement concluded at the time of the sub-lease.

ARTICLE 596 (E.C. 597) CESSATION OF LIABILITY OF ORIGINAL LESSEE

1. A lessee ceases to be answerable to the lessor, either as guarantor of the assignee in case of assignment of the contract of lease, or as regards his obligations arising from the principal contract of lease in the case of a sub-lease:

1. if the lessor has formally agreed to the assignment of lease or to the sub-lease;

2. if the lessor has received, without reserving his rights as against the lessee, the rent directly from such assignee or sub-lessee.

The End of a Contract of Lease

ARTICLE 597 (E.C. 598) EXPIRATION OF LEASE

A lease ends at the expiration of the agreed term without it being necessary to give notice of evacuation.

ARTICLE 598 (E.C. 599) TACIT RENEWAL OF LEASE

1. If, after the lease has expired, the lessee continues to enjoy the leased property to the knowledge of and without objection on the part of the lessor, the lease is deemed to be renewed upon the same conditions but for an indefinite duration. The lease so renewed is governed by the provisions of Article 562 (81).

(81) Art.563 in E.C.

2. This tacit renewal is deemed to be a new lease and not a mere prolongation of the original lease. Nevertheless, subject to the rules of publications applicable to real property, the real securities supplied by the lessee in guarantee of the old lease are transferred to the new lease. The suretyship, whether personal or real, is not transferred to the new lease unless the surety consents thereto.

ARTICLE 599 (E.C. 600) NOTICE OF EVACUATION

When notice of evacuation has been given by one party to the other party and the lessee, notwithstanding the notice, continues to enjoy the property after the expiration of the lease, the lease will not, subject to proof to the contrary, be deemed to have been renewed.

Death or Insolvency of Lessee

ARTICLE 600 (E.C. 601) EFFECT OF DEATH

1. A contract of lease is not terminated either by the death of the lessor or of the lessee.

2. In the event of the death of the lessee, however, his heirs may claim the termination of the lease if they establish that, as a result of the death of the person whose estate they inherited, the burden of the lease has become too heavy for their resources or that the lease exceeds their needs. In such an event, the periods of notice of termination laid down in Article 562 shall be observed and the claim for termination of the lease made within six months at the most from the date of the death of the lessee.

ARTICLE 601 (E.C. 602) EXCEPTIONAL CONDITIONS

If the lease has been granted to the lessee solely on account of his calling or of other considerations relating to his person, his heirs or the lessor may, on his death, claim termination of the lease.

ARTICLE 602 BANKRUPTCY OF LESSEE

In the event of the bankruptcy of the lessee the Trustee in Bankruptcy may demand the resiliation of the lease upon payment of suitable compensation.

ARTICLE 603 (E.C. 604) VOLUNTARY OR FORCED TRANSFER OF LEASED PROPERTY

1. In the case of a voluntary or forced transfer of the ownership of the leased property to a third party, the new owner is only bound by the lease if it has been given an established date prior to the act entailing the transfer of ownership.

2. The new owner may, however, avail himself of the contract of lease, even if he is not bound by such contract.

ARTICLE 604 (E.C. 605) PROTECTION OF RIGHTS OF LESSEE

1. A person acquiring the leased property, who is not bound by the lease, can only evict the lessee by giving him notice as provided for in Article 562.

2. In the absence of a provision to the contrary, the lessor must, if notice of eviction is given before the end of the lease, compensate the lessee. The lessee cannot be evicted before he receives compensation either from the lessor or from the new owner paying on behalf of the lessor, or until he has obtained an adequate security for the payment of such compensation.

ARTICLE 605 (E.C.606) RENT PAID IN ADVANCE

The lessee cannot set up rent paid in advance against a new owner, if the new owner proves that at the time of payment the lessee knew or should necessarily have known of the transfer of the ownership. Failing proof thereof, the new owner has only a remedy against the lessor.

ARTICLE 606 (E.C.607) LESSOR'S NEED FOR LEASED PROPERTY

When it has been agreed that the lessor may terminate the contract if he becomes personally in need of the property, he shall, if he exercises his right, be bound, unless otherwise agreed, to give the lessee notice of termination in accordance with the delays provided for in Article 562.

ARTICLE 607 (E.C.608) BURDENSOME CIRCUMSTANCES

1. When a lease is made from a fixed period, either of the contracting parties may, if serious and unforeseen circumstances arise of such a nature as to render, from the commencement of or during the lease, the performance too burdensome, demand the termination of the lease before its expiration, provided he gives notice in accordance with the delays provided for in Article 562 and pays equitable compensation to the other party.

2. If it is the lessor who demands the termination of the lease, the lessee will not be compelled to hand back the leased property before he has been compensated or obtained adequate guarantee.

ARTICLE 608 (E.C.609) TRANSFER OF OFFICIAL

An official or an employee whose duties oblige him to change his place of residence may claim termination of the lease of his dwelling house, when his lease is made for a fixed period, provided that he gives notice of such termination in accordance with the delays provided for in Article 562. Any agreement to the contrary is void.

2. Certain Kinds of Lease

Leases of Agricultural Land

ARTICLE 609 (E.C. 610) LEASES OF AGRICULTURAL LAND

If the leased property is agricultural land, the lessor is not bound to hand over to the lessee cattle and agricultural implements existing on the land unless they are included in the lease.

ARTICLE 610 (E.C. 611) DUTIES OF LESSEE

When cattle and agricultural implements belonging to the lessor are handed over to the lessee, the lessee is under the obligation to take proper care of them and to maintain them in the manner required for their customary use.

ARTICLE 611 (E.C. 612) PERIOD OF LEASE

When a lease of agricultural land provides that the lease is made for one of several years, it is deemed to be for one or several completed annual rotations of crops.

ARTICLE 612 (E.C. 613) WORKING AGRICULTURAL LANDS

1. A lessee of agricultural land must work the land in accordance with the requirements of normal agricultural use. He must, more particularly, maintain the land in a good state of production.

2. He must not, without the consent of the lessor, make any substantial change in the established method of cultivating the land, the effects of which might extend beyond the period of the lease.

ARTICLE 613 (E.C. 614) REPAIRS

1. Subject to an agreement or custom to the contrary, the lessee is bound to carry out repairs necessary for the normal enjoyment of the leased land. He is in particular responsible for the clearing and maintenance of canals, trenches, channels and drains. He is also responsible for the normal maintenance of roads, dikes, bridges, fencing, wells, dwelling houses and farm buildings.

2. The erection of buildings and major repairs to existing buildings and dependencies on the land are, subject to any agreement or custom to the contrary, the responsibility of the lessor. The same rule applies as regards repairs to wells, canals, water channels and reservoirs.

ARTICLE 614 (E.C. 615) INABILITY TO PREPARE OR TO SOW THE LAND

If the lessee has, as a result of force majeure, been prevented from preparing or sowing the land, or if the whole or the greater part of the seed has been destroyed thereby, he is, subject to any agreement to the contrary and as the case may be, relieved from payment of the whole or part of the rent.

ARTICLE 615 (E.C. 616 but amended) LOSS OF CROPS

1. If, after having sown, the lessee loses the whole or a large part of the crop by reason of an accidental cause or by reason of force majeure he may obtain a reduction in the value of the rent.

2. The lessee cannot demand a remission of the rent if he is compensated against his loss either by the profits he has derived during the whole period of the lease, by an account received under an insurance policy or by any other means.

ARTICLE 616 (E.C. 617) EXTENSION OF PERIOD OF LEASE

If, at the end of the lease, the harvest has not ripened for reasons not imputable to the lessee, he may, upon payment of a proportional rent, remain on the leased land until the harvest ripens.

ARTICLE 617 (E.C. 618) REGARD TO BE HAD TO INTERESTS OF SUCCESSOR

An outgoing (82) lessee shall do nothing of a nature to diminish or retard the enjoyment of the land by an incoming lessee. He is bound, in particular, just before vacating the land, to allow the incoming lessee to prepare the land and to sow, if he does not sustain any injury thereby.

(82) The word "outgoing" is inserted for clarity.

Amodiation

ARTICLE 618 (E.C. 619) DEFINITION

Agricultural land and land planted with trees may be granted in amodiation to a lessee in consideration of the lessor taking a fixed share in the crop.

ARTICLE 619 (E.C. 620) RULES AS TO AMODIATION

In the absence of agreement or custom to the contrary, the conditions governing leases apply to amodiation, subject to the following provisions.

ARTICLE 620 (E.C. 621) PERIOD OF AMODIATION

The amodiation is, when no term is fixed, deemed to have been granted for one yearly rotation of crops.

ARTICLE 621 (E.C. 622) AGRICULTURAL IMPLEMENTS AND CATTLE

The lease in case of amodiation includes agricultural implements and cattle belonging to the lessor which are on the land at the time of the agreement.

ARTICLE 622 (E.C. 623) DUTIES OF LESSEE

1. The lessee must give to the cultivation and to the preservation of the crop the same care that he gives to his own affairs.

2. The lessee is responsible for deterioration to the land during his enjoyment, unless he proves that he has looked after the preservation and maintenance of the land with the care of a reasonable person.

3. The lessee is not bound to replace cattle that die or agricultural implements worn out through no fault of his own.

ARTICLE 623 (E.C. 624) DIVISION OF PRODUCE

1. The produce is divided between the two parties in the proportion agreed upon or established by custom; in default of agreement or custom the produce is divided equally.

2. Loss by reason of force majeure of all or part of the produce is borne equally by the two parties and gives rise to no claim by either party against the other.

ARTICLE 624 (E.C. 625) ASSIGNMENT OR SUB-LEASE

In amodiation the lessee cannot assign the lease or sub-let the land amodiated without the consent of the lessor.

ARTICLE 625 (E.C.626) DEATH OF ONE OF THE PARTIES

The amodiation is not determined on the death of the lessor, but is determined by the death of the lessee.

ARTICLE 626 (E.C. 627) CESSATION OF AMODIATION BEFORE EXPIRY OF PERIOD

1. When the amodiation ceases before the end of its term, the lessor must reimburse the lessee or his heirs for any expenditure made in respect of crops which have not ripened, and pay equitable compensation for work that the lessee has done on the land.

2. If, however, the amodiation is dissolved by the death of the lessee, his heirs may, instead of claiming reimbursement of the expenses hereinbefore referred to, take the place of their principal until the crops have ripened, provided that they are in a position to continue the proper cultivation of the land.

Lease of Waqf Property

ARTICLE 627 (E.C.628 with omission in para.2) LEASE OF WAQF PROPERTY

1. A trustee has the right to let waqf property.

2. A beneficiary, even if he is the sole beneficiary, cannot grant a lease unless the right to do so has been given to him by the creator of the waqf, or unless he is authorised to do so by one who has had conferred upon him the power to lease by a trustee.

ARTICLE 628 (E.C.629) POWER TO COLLECT RENT

1. The trustee is not entitled to receive the rent, and payment must not be made to the beneficiary without the consent of the trustee.

ARTICLE 629 (E.C.630) WHO MAY NOT LEASE WAQF PROPERTY

1. The trustee is not entitled to take the waqf property on lease even at the current rent for similar properties.

2. The trustee may lease waqf property to his ascendants or descendants, provided that the rent is the current rent for similar properties.

ARTICLE 630 (E.C.631) GROSSLY INADEQUATE RENT

1. A lease of waqf property is not valid if the rent is grossly inadequate, unless the lessor is the sole beneficiary with power to administer the waqf. In such a case, the lease, notwithstanding the gross inadequacy of the rent, will bind the lessor, but will not bind beneficiaries who succeed him.

ARTICLE 631 (E.C.632) ASSESSMENT OF RENT

1. In cases of lease of waqf property, the estimation of the current rent for similar properties will be made at the time of the conclusion of the contract of lease; any changes taking place after that date shall not be taken into account.

2. When a trustee grants a lease of waqf property for a grossly inadequate rent, the lessee is bound, under penalty of resiliation of the contract, to make up the rent to the rent for similar properties.

ARTICLE 632 (E.C.633) RESTRICTION UPON PERIOD OF LEASE

1. The trustee cannot, without the authority of the Judge, lease waqf property for a period

exceeding three years, even by successive contracts. Any lease entered into for a longer period shall be reduced to three years.

2. If, however, the trustee is also either the founder or the sole beneficiary, he may, without it being necessary to obtain the authority of the Judge, lease the waqf property for more than three years, subject to the right of the trustee succeeding him to claim the reduction of the period of three years.

ARTICLE 633 (E.C. 634) PROVISIONS AS TO LEASE OF WAQF

The provisions relating to lease apply to the lease of waqf property, in so far as they are not incompatible with the preceding provisions.

Section II

Loan for Use

ARTICLE 634 (E.C. 635) DEFINITION

A loan for use is a contract by which the lender undertakes to hand over to the borrower without valuable consideration, a non-consumable thing for his use during a specific time or for a specific purpose, which thing the borrower undertakes to restitute after having used it.

1. Obligations of Lender

ARTICLE 635 (E.C. 636) DELIVERY OF THING

The lender is bound to hand over to the borrower the thing lent in the condition in which it was at the time of the conclusion of the contract of loan for use, and to leave him in possession of the thing lent during the period of the contract.

ARTICLE 636 (E.C. 637) REIMBURSEMENT OF EXPENSES

1. If, during the period of the loan, the borrower is obliged to incur expenses necessary for the preservation of the thing, the lender must reimburse him his expenses.

2. In the case of moneys usefully spent, the provisions with regard to expenses incurred by a possessor in bad faith will be applicable.

ARTICLE 637 (E.C. 638) WARRANTY OF LENDER

1. The lender does not warrant against dispossession of the thing loaned unless there has been an agreement for such warranty or the lender has deliberately concealed the cause of dispossession.

2. Similarly, the lender does not warrant against hidden defects. If, however, he has deliberately concealed such defects, or has warranted that the thing is free from defects, he is bound to compensate the borrower for any loss the borrower has suffered as a result thereof.

2. Obligations of Borrower

ARTICLE 638 (E.C. 639) RESTRICTIONS UPON USE OF THING LOANED

1. The borrower may only use the thing lent in the manner and to the extent provided for in the contract, according to the nature of the thing or in accordance with custom. He must not assign the use to a third party, even gratuitously, without the authority of the lender.

2. The borrower is not responsible for changes to or deterioration of the thing lent resulting from its use in accordance with the contract.

ARTICLE 639 (E.C. 640) MAINTENANCE OF THING LOANED

1. When the use of the thing let entails expenses by the borrower, he will not have the right to claim the refund thereof. He is bound to pay the necessary expenses for the normal maintenance of the thing.

2. The borrower may remove any additions that he has made to the thing lent, provided that he reinstates the thing in its original condition.

ARTICLE 640 (E.C. 641) DESTRUCTION OF THING LOANED

1. The borrower is bound to take such care for the preservation of the thing as he would take for the preservation of his own property; provided that the care he takes it not less than that which a reasonable person would take.

2. The borrower is, in any event, responsible for the loss of the thing lent arising from a fortuitous event or "force majeure" if it was possible for him to avoid such loss by using his own property, or if he could only preserve his own property or the thing lent and he preferred to preserve his own property.

ARTICLE 641 (E.C. 642) RESTITUTION OF THING LOANED

1. The borrower must, at the end of the loan, restitute the thing received in its state at that time, without prejudice to his responsibility for loss or deterioration.

2. In the absence of an agreement to the contrary, the borrower must restitute the thing at the place that he received it.

3. Termination of Loan for Use

ARTICLE 642 (E.C. 643) EXPIRATION OF TERM

1. The loan for use comes to an end upon the expiration of the term agreed and, in default of such a term being fixed, when the thing has served the purpose for which it was lent.

2. If there is no way by which the term of the loan for use can be fixed, the lender may demand its termination at any time.

3. The borrower may, in all cases, restitute the thing lent before the end of the loan. If, however, such restitution is prejudicial to the lender, he cannot be compelled to accept the thing.

ARTICLE 643 (E.C. 644) TERMINATION OF LOAN

The lender may put an end to a loan for use at any time in the following cases:
(a) if the lender has suddenly an urgent an unforeseen need of the thing;
(b) if the borrower uses the thing improperly or neglects to take the necessary precautions for its preservation;
(c) if the borrower becomes insolvent after the conclusion of the loan or if his insolvency before the conclusion of the loan was not known to the lender.

ARTICLE 644 (E.C. 645) DEATH OF BORROWER

In the absence of an agreement to the contrary, a loan for use ends with the death of the borrower.

Chapter III

Contracts for the Hire of Services

Section I

Contracts for Work and Concessions for Public Utility Services

1. Contracts for Work

ARTICLE 645 (E.C. 646) DEFINITION

By a contract for work one of the contracting parties undertakes to do a piece of work or to perform a service in consideration of remuneration which the other contracting party undertakes to pay.

Obligations of Contractor

ARTICLE 646 (E.C. 647) SUPPLY OF MATERIALS

1. The contractor may undertake to supply his work only, the master of the work (83) being responsible for the supply of materials which the contractor uses in or for the performance of his work.

(83) The "master of the work", i.e., the person who has ordered the work: the employer.

2. The contractor may also undertake to supply the materials as well as his work.

ARTICLE 647 (E.C. 648) CONTRACTOR'S WARRANTY

When the contractor undertakes to supply the whole or part of the materials to be used in the work, he is responsible for and warrants their good quality to the master.

ARTICLE 648 (E.C. 649) SUPPLY OF MATERIALS BY MASTER

1. When the materials are supplied by the master, the contractor is bound to care for their preservation, to use them with technical skill, to account to the master for their use in the work and return to him any such materials that remain. If part of the materials becomes unfit for use owing to the contractor's neglect or lack of professional skill, the contractor is bound to refund to the master the value thereof.

2. In the absence of an agreement or trade custom to the contrary, the contractor shall provide, at his own expense, the tools and accessory appliances necessary for the performance of the work.

ARTICLE 649 (E.C. 650) BREACH OF OBLIGATIONS BY CONTRACTOR

1. If, in the course of execution, it is established that the contractor is performing the work in a manner that is defective or contrary to the agreement, the master may formally summon him to alter, within a reasonable period fixed by him, the manner in which he is performing the work. If after the expiration of such a period the contractor fails to adopt the proper manner of working, the master may either demand resiliation of the contract or the handing over of the works to another contractor at the cost of the first contractor, in accordance with the provisions of Article 212 thereof (84).

(84) Art. 209 in E.C.

2. Immediate resiliation of the contract may, however, be demanded without it being necessary to grant any delay, when rectification of the defective manner of performance is impossible.

ARTICLE 650 (E.C. 651) LIABILITY OF ARCHITECT AND CONTRACTOR FOR DEMOLITION

1. The architect and contractor are jointly and severally responsible for a period of ten years for the total or partial demolition of constructions or other permanent works erected by them, even if such destruction is due to a defect in the ground itself, and even if the master authorized the erection of the defective construction, unless, in this case the constructions were intended by the parties to last for less than ten years.

2. The warranty imposed by the preceding paragraph extends to defects in constructions and erections which endanger the solidity and security of the works.

3. The period of ten years runs from the date of delivery of the works.

4. This Article does not apply to the rights of actions which a contractor may have against his sub-contractors.

ARTICLE 651 (E.C. 652) LIABILITY OF ARCHITECT

An architect who only undertakes to prepare the plans without being entrusted with the supervision of their execution, is responsible only for defects resulting from his plans.

ARTICLE 652 (E.C. 653) VOID CONTRACTS FOR WORK

Any clause tending to exclude or restrict the warranty of the architect and the contractor is void

ARTICLE 653 (E.C. 654) PRESCRIPTION

Actions on the warranties above referred to are prescribed after three years from the date of the destruction of the works or the discovery, of the defect.

Obligations of the Master

ARTICLE 654 (E.C. 655) DELIVERY OF COMPLETED WORKS

When the contractor completes the works and places them at the master's disposal, the master shall, as soon as possible take delivery in accordance with prevailing custom. When the master, in spite of being formally summoned, fails, without reasonable cause, to take delivery of the works, the works will be deemed to have been delivered to him.

ARTICLE 655 (E.C. 656) PAYMENT

In the absence of custom or an agreement to the contrary the price is payable upon delivery of the works.

ARTICLE 656 (E.C. 657) EXCESS OF ESTIMATED COST

1. When a contract is concluded in accordance with an estimate drawn up on a unit price basis and it becomes apparent, during the course of the work, that it will be necessary, in order to complete the works according to the agreed plan, considerably to exceed the estimated price, the contractor is bound to notify the master thereof forthwith and to inform him of the anticipated increase in price; if he fails to do so he forfeits his right to recover the expenses incurred in excess of the estimate.

2. When the estimated excess in the price for the execution of the plans is considerable, the master may rescind the contract and stop the work, provided that he does so without delay and pays the contractor for the cost of the work done by him, estimated in accordance with the terms of the contract, without being liable to compensate the contractor for the profit he would have realized if he had completed the works.

ARTICLE 657 (E.C. 658) LUMP SUM BASIS

1. When a contract is concluded on a lump sum basis according to a plan agreed with the master, the contractor has no claim to an increase of price, even if modifications and additions are made to the plan, unless such modifications or additions are due to the fault of the master or have been authorized by the master and the price thereof agreed with the contractor.

2. Such agreement should be made in writing unless the principal contract was concluded verbally.

3. The contractor has no claim to an increase of price on the grounds of an increase in the price of raw materials, labour, or any other item of expenditure, even if such increase is so great as to render the performance of the contract onerous.

4. When, however, as a result of exceptional events of a general character which could not be foreseen at the time the contract was concluded, the economic equilibrium between the respective obligations of the master and of the contractor breaks down, and the basis on which the financial estimates for the contract were computed has subsequently disappeared, the Judge may grant an increase of the price or order the resiliation of the contract.

ARTICLE 658 (E.C. 659) PRICE NOT FIXED IN ADVANCE

When the price has not been fixed in advance, it must be calculated according to the value of the work and the expenses of the contractor.

ARTICLE 659 (E.C. 660) FEE FOR ARCHITECT

1. An architect is entitled to a separate fee for the preparation of the plans and specifications and another for the supervision of the work.

2. If these fees are not specified in the contract they shall be fixed according to prevailing custom.

3. If, however, the work is not completed in conformity with the plans prepared by the architect, the fee shall be assessed on the basis of the time taken in their preparation, taking into consideration the nature of the work.

Sub-Contracts

ARTICLE 660 (E.C. 661) SUB-CONTRACTOR

1. A contractor may entrust the execution of the whole or part of the work to a sub-contractor, unless he is precluded from so doing by a clause in the contract, or unless the nature of the work presupposes reliance on his personal skill.

2. In such a case the contractor remains responsible to the master for his sub-contractor.

ARTICLE 661 (E.C. 662) RIGHT OF SUB-CONTRACTOR TO ACTION AGAINST MASTER

1. Sub-contractors and workmen working for a contractor in the execution of a contract have a direct right of action against the master but only to the extent of such sums as are due by the master to the main contractor on the date that action is commenced. Workmen of sub-contractors likewise have the same right of action against the main contractor and the master.

2. In case of an attachment served by one of them upon the master or the main contractor, workmen have the right of privilege on the sums due to the main contractor or to the sub-contractor at the time of the attachment, in proportion to the amount due to each of them. These sums may be paid to them direct.

3. The rights of sub-contractors and workmen provided for in this Article have priority over those of a person to whom the contractor has assigned sums due to him by the master.

End of Contract for Work

ARTICLE 662 (E.C. 663) TERMINATION OF CONTRACT BY MASTER

1. A master may terminate the contract and stop the work at any time before the completion of the works, provided that he compensates the contractor for all expenses he has incurred, for the work that he has done and the profit that he would have made if he nad completed the work.

2. The Court may, however, reduce the compensation due to the contractor for loss of profit if the circumstances justify such reduction. In particular, the Court shall deduct from such compensation any saving realized by the contractor as a result of the rescission of the contract by the master and any profit which the contractor could have made by employing his time otherwise.

ARTICLE 663 (E.C. 664) IMPOSSIBILITY OF PERFORMANCE

A contract for work comes to an end if the performance of the work for which the contract was concluded becomes impossible.

ARTICLE 664 (E.C. 665) DESTRUCTION OF MATERIALS

1. When works are destroyed by a fortuitous event, before delivery to the master, the contractor has no claim either for the price of his work or for reimbursement of his expenses. The loss of materials falls on the party who supplied them.

2. When, however, the contractor fails to comply with a formal summons to deliver the works or when the works are destroyed or deteriorate before delivery, by the fault of the contractor, he is under a liability to indemnify the master for the materials supplied to carry out the works.

3. When the master is formally summoned to take delivery of the works or when the works are destroyed or deteriorate by the fault of the master or by reason of a defect in the materials supplied by him, the master shall bear the loss resulting from the destruction of the materials and is liable to the contractor for his remuneration in addition to such compensation as may be due.

ARTICLE 665 (E.C.666) DEATH OF CONTRACTOR

A contract for work is dissolved by the death of the contractor, if his personal skill was taken into account when the contract was concluded. If such personal skill was not taken into account, the contract is not ipso facto dissolved and the master may not, except in cases in which Article 662 (85) applied, resiliate the contract, unless the contractor's heirs do not offer sufficient guarantee for the due performance of the work.

(85) Art.663 in E.C.

ARTICLE 666 (E.C. 667) EFFECT OF TERMINATION BY DEATH OF CONTRACTOR

1. When the contract is dissolved by the death of the contractor, the master is bound to pay to the contractor's estate the value of the work already done and expenses incurred for the execution of the work which has not been completed, to the extent of the benefit that he derives from such work and expenses.

2. The master may, on the other hand, demand delivery, against payment of a fair price, of the materials prepared and plans whose execution has been commenced.

3. These provisions also apply when the contractor who has commenced the work becomes unable to complete it owing to a cause beyond his control.

2. Concessions of Public Utility Services

ARTICLE 667 (E.C. 668) DEFINITION

A concession of a public utility service is a contract whose object is the management of a public utility service of an economic nature. Such a contract is concluded between the administrative authority in charge of the organization of such a service and a private person or company to whom the exploitation of the service is entrusted for a fixed period.

ARTICLE 668 (E.C. 669) DUTIES OF CONCESSIONAIRE

The concessionaire of a public utility service undertakes, by the contract concluded between him and the consumer, to provide the latter in a normal manner with the services corresponding to the rates which he collects, in accordance with the conditions stipulated in the contract of concession and its annexes and also with the conditions which the nature of the work and the laws applicable thereto demand.

ARTICLE 669 (E.C. 670) EQUALITY BETWEEN CONSUMERS

1. When the concessionaire of the public utility service enjoys a de jure or de facto monopoly service, he is bound to observe strict equality between consumers both as regards the services rendered and the rates charged.

2. This principle of equality does not exclude special treatment involving the reduction or remission of rates, provided such treatment is granted to all persons who apply therefor and who fulfil the general conditions laid down by the concessionaire. The principle of equality entails, however, the prohibition of the concessionaire from granting to some customers advantages which he refuses to grant to others.

3. Any discrimination granted contrary to the provisions of the preceding paragraph renders the concessionaire liable to compensation for the loss which may be caused, as a result of such discrimination to third parties, by the disturbance of the natural balance of fair competition.

ARTICLE 670 (E.C. 671) FORCE OF RATES

1. The rates laid down by a public authority will have the force of law with regard to contracts entered into between the concessionaire and consumers; the parties shall not have the right to depart therefrom by agreement.

2. The rates may be revised or modified. If the rates are modified and such modification is ratified, the new rate becomes applicable, but without retroactive effect, from the date fixed for its coming into force by the act of ratification. Any contracts running (abonnements) at the time of the modification of the rates will be subject to the increase or reduction of charges for the period of the contract unexpired at the date of coming into force of the new rates.

ARTICLE 671 (E.C. 672) RECTIFICATION OF IRREGULARITIES OR MISTAKES IN RATES

1. Any irregularity or mistake in the application of the rates to individual contracts is subject to rectification.

2. If the irregularity or mistake operates to the detriment of the consumer, he shall be entitled to recover the amount paid in excess of the authorized charge. If such an irregularity or mistake operates to the detriment of the concessionaire of the public utility service, he shall be entitled to collect an amount to make up the authorized charge. Any agreement to the contrary is void. The right of recovery in either case is barred by prescription after one year from the date when the collection of the incorrect charge took place.

ARTICLE 672 (E.C. 673) INTERRUPTIONS IN SUPPLY

1. Consumers, in the case of concessions for the distribution of water, gas, electricity, power or other similar commodities, must support interruptions or irregularities for a short time to which installations of such services are normally subject, such as those necessary for the upkeep of the installation with which the service is maintained.

2. The concessionaires of these services may repudiate responsibility in respect of interruptions or irregularities of abnormal length or gravity, by proving that they are caused by force majeure not imputable to the operation of the service, or by a fortuitous event which could not have been foreseen or whose consequences could not have been avoided by any vigilant management acting without undue regard to economy. A strike constitutes a fortuitous event if the concessionaire establishes that it took place without any fault on his part.

Section II

Contracts of Service

ARTICLE 673 (E.C. 674) DEFINITION

A contract of service is one whereby one of the contracting parties undertakes to work in the service and under the supervision or control of the other contracting party in consideration of a remuneration which such other party undertakes to pay.

ARTICLE 674 (E.C. 675) SPECIAL LAWS RELATING TO SERVICE

1. The provisions contained in this Section apply only in so far as they are not expressly or implicitly inconsistent with special laws relating to service.

2. Such special laws define the categories of workers to which the provisions of this section do not apply.

ARTICLE 675 (E.C. 676) PERSONS SUBJECT TO CONTRACTS OF SERVICE

1. The provisions of this section as to contracts of service apply to the relationship between masters and canvassers, commercial representatives, commercial travellers, assurance agents and other intermediaries, even if they are remunerated on a commission basis or if they work for the account of several employers at the same time, so long as these persons work under the orders and supervision of such masters.

2. When the services of a commercial representative or a commercial traveller come to an end, even by reason of the expiration of the term of employment specified in the contract, he shall be entitled to receive, by way of remuneration, the commission or discount, agreed upon or established by custom, on orders which do not reach the master until after the commercial representative or the traveller has left his service, if such orders are the direct result of the employee's representations (demarches) to customers while he was in the master's service. Such employees, however, can only claim this right during the usual period for such claims established by custom in respect of each business.

1. Elements of the Contract

ARTICLE 676 (E.C. 677) FORM OF THE CONTRACT

In the absence of provisions to the contrary in law or in administrative regulations, a contract of service is not required to be in any special form.

ARTICLE 677 (E.C. 678) PERIOD OF CONTRACT

1. A contract of service may be concluded either for a specific service or for a fixed period; it may also be entered into for an indefinite duration.

2. If a contract of service is entered into for the lifetime of the worker or the master or for a period longer than five years, the worker, after the expiration of five years, may resiliate the contract without being liable to pay compensation, provided that he give six months prior notice to the master.

ARTICLE 678 (E.C. 679) RENEWAL FOR A PERIOD

1. When a contract of service is entered into for a fixed period, it, ipso facto, comes to an end at the expiration of the term.

2. If the parties continue to carry out the contract after the expiration of the term, the contract will be deemed to have been renewed for an indefinite duration.

ARTICLE 679 (E.C. 680) CONTRACT FOR PERFORMANCE OF SPECIFIC WORK

1. When a contract is entered into for the performance of a specific work, it comes to an end when the agreed work has been completed.

2. When the work is, by its nature, capable of being renewed and the contract is continued after the completion of the work agreed, the contract will be deemed to have been implicitly renewed for the period necessary for the execution of the same work a second time.

ARTICLE 680 (E.C. 681) PRESUMPTION AS TO REMUNERATION

The performance of services is presumed to be made for remuneration, if it is not customary for such services to be performed gratuitously or if such services come within the scope of the profession of the person who performs them.

ARTICLE 681 (E.C. 682) RATE OF REMUNERATION

1. When a contract for service for an individual or a group of individuals or factory regulations do not specify salary payable by the master, the salary will be fixed in accordance with the rates, if any, applicable to work of a similar nature. If no rates exist, the salary will be fixed in accordance with the custom of the trade and the customs of the place where the work is performed. If there is no such custom, the Judge will fix the salary in accordance with equity.

2. The same rules will apply to determine the nature and extent of the work to be performed by the employee.

ARTICLE 682 (E.C. 683) INTEGRAL PARTS OF REMUNERATION

The following sums form an integral part of an employee's salary and are taken into account in computing the attachable portion thereof:

1. Commissions payable to canvassers, commercial travellers and commercial representatives;

2. Percentages payable to employees of commercial establishments on the price of sales effected by them and high cost of living allowances paid to them;

3. Any gratuity paid to a worker in addition to his salary, as well as fidelity bonuses, family allowances and other similar allowances, if payment of such sums is provided for in the individual contract of service or in the workshop regulations, or if these sums are customarily payable so that the worker regards such sums as forming part of his salary and not constituting a bounty, and provided that the amount of such payments is known before the attachment is made.

ARTICLE 683 (E.C. 684) TIPS

1. Tips are deemed to be salary only in industries or trades where it is customary to pay tips and where tips are subject to regulations by which they can be controlled.

2. Tips are deemed to form part of the employee's salary when the amounts given are tips by customers of a particular commercial establishment to the employees are collected in a common fund for distribution to the workers by or under the supervision of the employer.

3. In some industries, such as hotels, restaurants, cafes and bars, a worker's salary may consist solely of the tips he receives and the food he consumes.

2. Effects of a Contract

Obligations of the Worker

ARTICLE 684 (E.C. 685) OBLIGATIONS OF THE WORKER

The worker must :
(a) himself perform the work and in so doing use the care of a reasonable person;
(b) obey the orders of the master relating to the performance of the agreed work and coming within the duties of the worker, if such orders are not contrary to the contract, to law or morality, and if obedience thereto does not entail danger;
(c) preserve with care things entrusted to him for the performance of his work;
(d) safeguard the industrial or commercial secrets of the work, even after the end of the contract.

ARTICLE 685 (E.C. 686 with additions) COMPETITION AND CONDITIONS REGARDING IT

1. When the work entrusted to the worker enables him to know the clients of the master or to learn the secrets of his business, the parties may agree that the worker will not be entitled, after the termination of the contract, to compete with the master or participate in a competitive undertaking.

2. In order, however, that any such agreement be valid, it is necessary :
(a) that the agreement shall be in writing;
(b) that the worker has attained his majority at the time the contract is entered into;
(c) that the restriction be limited as to time, place and kind of work, to the extent necessary for the protection of the legitimate interests of the master, provided that the restriction shall not be for a period exceeding five years in the case of one who has held the position of manager or exceeding three years under other conditions and if agreement is reached for a period greater than this then shall it be reduced to the limit provided.

3. The master cannot avail himself of such an agreement if he resiliates the contract or refuses to renew it, without the worker giving him adequate grounds for such action; nor can the master avail himself of such agreement if he himself has given the worker adequate grounds to resiliate the contract.

ARTICLE 686 (E.C. 687) PENALTY CLAUSE IN RESTRAINT OF COMPETITION

When the contract contains a penalty clause applicable in the event of the breach of a condition in restraint of competition, and such a clause is so onerous as to be tantamount to pressure on the worker to compel him to remain in the service of the master for a longer time than that agreed both the penalty clause and the condition in restraint of competition will be void.

ARTICLE 687 (E.C. 688) INVENTIONS DISCOVERED BY WORKER

1. When a worker discovers a new invention while in the service of the master, the master will have no rights in respect of the invention, even if the worker has discovered the invention by reason of the work performed in the service of the master.

2. An invention discovered by a worker in the course of his work belongs, however, to the master, if the nature of the work that the worker has undertaken to carry out requires him to give his time to invention or if the master has expressly stipulated in the contract that he will have the right to inventions discovered by the worker.

3. If the invention is of a serious economic importance, the worker may in cases falling within the preceding paragraph, demand a special remuneration to be fixed in accordance with the principles of equity, taking into account in the assessment of such remuneration the extent of help supplied by the master and the use the worker has made of his master's installations for the purpose of the invention.

ARTICLE 688 (E.C. 689) SPECIAL LAWS TO BE OBSERVED

In addition to the obligations laid down in the preceding Articles, an employee must carry out obligations imposed upon him by special laws.

The Obligations of the Master

ARTICLE 689 (E.C. 690) PAYMENT OF REMUNERATION

The master must pay the worker his salary at the time and place agreed upon in the contract or established by custom, subject to the provisions in this connection contained in special laws.

ARTICLE 690 (E.C. 691) AGREEMENT TO GIVE WORKER SHARE IN PROFIT

1. When a contract provides that the worker will be entitled, in addition to or in lieu of the agreed salary, to a share of the master's profits or to a percentage of the gross receipts or of the amount of the production or of the value of the savings effected, or to other remuneration of a like nature, the master is bound to render to the worker, after each balance sheet, an account of the amount payable to him in this respect.

2. The master must, in addition, supply the worker, or a trustworthy person designated by the parties or by the Judge, with the information necessary to verify the accuracy of such account and allow him to consult his books for this purpose.

ARTICLE 691 (E.C. 692) RIGHT TO REMUNERATION FOR WORK NOT PERFORMED

When a workman or an employee comes to perform his day's work as stipulated in his contract of service, or declares his readiness to perform a day's work and is only prevented from so doing by a cause imputable to the master, he is entitled to his salary for the day.

ARTICLE 692 (E.C. 693) SPECIAL LAWS TO BE OBSERVED

In addition to the obligations laid down in the preceding Articles the master is bound to carry out the obligations imposed on him by special laws.

3. Termination of Contracts of Service

ARTICLE 693 (E.C.694) TERMINATION BY EXPIRY OF PERIOD OR COMPLETION OF WORK

1. Subject to the provisions of Articles 677 and 678 (86), a contract of service ends at the expiration of the term fixed or upon the completion of the work in respect of which the contract was entered into.

2. When the duration of the contract is not fixed either by the agreement or by the nature of the work or by its object, each of the contracting parties may terminate his relationship with the other party; the exercise of this right must be preceded by notice, the manner and period of which are defined by special laws.

(86) Arts. 678 and 679 in E.C.

ARTICLE 694 (E.C. 695 but last part of para. 2 omitted here) TERMINATION WITHOUT NOTICE

1. When a contract entered into for an indefinite period is terminated by one of the parties without observing the delay required for notice or before the end of this delay, he is bound to compensate the other party for the whole period of the notice or for the portion thereof still to run. Subject to the provisions of special laws on the subject, such compensation will include, in addition to the fixed salary due for this period, all additional remuneration, provided the amount of such remuneration is fixed and defined.

2. When the contract is terminated vexatiously by one of the contracting parties, the other party may, in addition to the compensation due owing to failure to observe the delay required for notice, claim damages for the prejudice resulting from the unjustified termination of the contract.

ARTICLE 695 WITHDRAWAL FOR JUSTIFIABLE REASON

1. If the contract is for a specified period each of the contracting parties may withdraw prior to the expiration thereof, and without previous notice in the case of a contract of unspecified duration, because of causes which, even temporarily, have intervened in the course of the relations between the parties. If the contract is for an unspecified period, a worker who withdraws therefrom for a justifiable reason is entitled to damages as provided for in paragraph 2 of the preceding Article.

2. Bankruptcy of the master shall not be considered as a justifiable reason for withdrawal.

ARTICLE 696 (E.C. 696) VEXATIOUS CONDUCT OF MASTER

1. Compensation on dismissal may be granted, even though the master has not himself dismissed the worker, if the master, by his own actions and especially by vexatious treatment or by a breach of the conditions of the contract, has obliged the worker to appear to have terminated the contract himself.

2. The transfer of a worker, without fault on his part, to a less profitable or less suitable post than that which he is occupying, is not deemed to be an indirect vexatious act if such transfer is necessary in the interests of the work. The transfer will, however, be deemed a vexatious act if it is made with the object of injuring the worker.

ARTICLE 697 (E.C. 697) DEATH OF MASTER

1. A contract of service is not dissolved by the death of the master, unless the personality of the master was a factor taken into consideration in concluding the contract. The contract, however, is dissolved by the death of the worker.

2. The rules laid down in special laws on the subject will be observed for the dissolution of the contract on account of death or prolonged illness of the worker or of any other cause constituting "force majeure" which prevents the worker from continuing his work.

ARTICLE 698 (E.C. 698) PRESCRIPTION

1. Actions arising out of a contract of service are prescribed after one year from the time of the termination of the contract; but in the case of actions arising out of commission and profit-sharing and percentage of gross receipts, the period of prescription only begins from the time when the master hands to the worker a statement of what is due to him according to the last balance-sheet.

2. Actions in connection with the disclosure of trade secrets or the enforcement of conditions of the contract as to the protection of such secrets, are not subject to this special limitation.

Section III

Mandate

1. Elements of Mandate

ARTICLE 699 (E.C. 699) DEFINITION

Mandate is a contract whereby a mandatary binds himself to perform a juridical act on behalf of a mandator.

ARTICLE 700 (E.C. 700) FORM OF MANDATE

In the absence of any provision of the law to the contrary, a mandate must be executed in the same form as that required for the execution of the juridical act in respect of which the mandate is given.

ARTICLE 701 (E.C.701) GENERAL MANDATE

1. A mandate given in general terms which does not specify the nature of the juridical act in respect of which it is given, only confers on the mandatary the power to perform acts of management.

2. Granting of leases of not more than three years duration, acts of preservation and maintenance, the recovery of rights and discharge of debts, are deemed to be acts of management. All acts of disposition necessary for management, as the sale of perishable crops, goods or movables, and the purchase of things necessary for the preservation and exploitation of the thing constituting the object of the mandate are deemed to be acts of management.

ARTICLE 702 (E.C. 702) SPECIAL MANDATE

1. A special mandate, in respect of any act which is not an act of management, is required, and in particular for a sale, a mortgage, a gift, a compromise, an admission, an arbitration, the tendering of an oath and representation before the Courts.

2. A special mandate to carry out a certain category of juridical acts is valid, save as regards gratuitous acts, even though the object of such acts is not specified.

3. A special mandate only confers on the mandatary a power to act in matters specified therein and in matters necessarily incidental thereto in accordance with the nature of each matter and prevailing custom.

2. The Effects of a Mandate

ARTICLE 703 (E.C. 703) EXTENT OF MANDATE

1. The mandatary is bound to perform the mandate without exceeding the limits fixed therein.

2. He may, however, exceed these limits if he finds himself unable to notify the mandator thereof beforehand and if the circumstances are such that it can be assumed that the mandator could not have failed to approve the act. In such a case, the mandatary is bound to inform the mandator immediately that he has exceeded the limits of the mandate.

ARTICLE 704 (E.C. 704) DEGREE OF CARE IMPOSED UPON MANDATARY

1. If the mandate is gratuitous, the mandatary must exercise in its performance the degree of care that he gives to his own affairs, without, however, being bound to exercise more diligence than a reasonable man.

2. When the mandate is given for remuneration, the mandatary must always exercise in its performance the diligence of a reasonable man.

ARTICLE 705 (E.C. 705) OBLIGATIONS OF MANDATARY

A mandatary is bound to give to his mandator all necessary information in connection with the execution of his mandate and render him an account thereof.

ARTICLE 706 (E.C. 706) USE OF PROPERTY OF MANDATOR

1. The mandatary may not use the property of the mandator for his own benefit.

2. He is liable for interest on sums used by him for his own benefit from the moment when he commences to use them. He is also liable for interest on sums that he owes the mandator from the time when he is served with a formal summons.

ARTICLE 707 (E.C. 707) PLURALITY OF MANDATARIES

1. When several mandataries are appointed, they are jointly and severally liable if the mandate is indivisible or if the damage sustained by the mandator is result of their common fault. Mandataries, however, even if joint and several, are not responsible for the acts done by their co-mandataries in excess of the limits of the mandate or by a wrongful use of the mandate.

2. When several mandataries are appointed by the same document without being authorized to act severally, they must act jointly except in cases where an exchange of views is essential, such as receiving a payment or paying a debt.

ARTICLE 708 (E.C. 708) LIABILITY OF MANDATARY FOR ACTS OF HIS REPRESENTATIVE

1. A mandatary who nominates a substitute to perform his mandate without being authorized to do so is responsible for the acts of the substitute as if they were his own acts; in such a case, the mandatary and his substitute are jointly and severally responsible.

2. When a mandatary is authorized to appoint a substitute without specifying the person, he is only liable for a faulty choice of the substitute or for faulty instructions that he gives him.

3. In the two preceding cases the mandator and the substitute of the mandatary have a direct right of action against each other.

ARTICLE 709 (E.C.709, first para only) MANDATE WITH OR WITHOUT REMUNERATION

1. A mandate is deemed to be gratuitous in the absence of agreement which may be express or result by implication from the position of the mandatary.

2. If the mandate provides for remuneration but does not specify the amount thereof then shall this remuneration be assessed by the Judge.

ARTICLE 710 (E.C. 710) REFUND OF EXPENSES INCURRED BY MANDATARY

Whatever result the mandatary may have achieved in the performance of the mandate, the mandator must repay to the mandatary any expenses incurred by him for the normal performance of the mandate with interest from the date when such expenses were incurred. When the performance of the mandate requires the mandator to supply to the mandatary sums of money for expenditure in respect of the mandate, the mandator must advance such amounts, if requested by the mandatary to do so.

ARTICLE 711 (E.C. 711) LIABILITY OF MANDATOR

The mandator is responsible for injury sustained by the mandatary, without fault on his part, in the normal performance of the mandate.

ARTICLE 712 (E.C. 712) LIABILITY OF MANDATORS IN CASE OF PLURALITY

When several persons appoint a sole mandatary for a common purpose, they are, in the absence of agreement to the contrary, jointly and severally liable to the mandatary as regards the consequences of the performance of the mandate.

ARTICLE 713 (E.C. 713) APPLICATION OF PROVISIONS AS TO REPRESENTATION

Articles 104 to 107, with regard to representation, apply to the relationship of a mandator and of a mandatary with third parties dealing with the mandatary.

3. The End of a Mandate

ARTICLE 714 (E.C. 714) TERMINATION

The mandate comes to an end by the completion of the work or by the expiration of the period for which it was given and by the death of the mandator or of the mandatary.

ARTICLE 715 (E.C. 715) TERMINATION OF MANDATE BY MANDATOR

1. The mandatory may, at any time and notwithstanding any agreement to the contrary, revoke or restrict the mandate. When, however, the mandate is remunerated, the mandator must indemnify the mandatary for loss sustained by him as a result of an intempestive or unjustified revocation.

2. When, however, the mandate has been given in the interests of a mandatary or of a third party, the mandator is not entitled to revoke or restrict the mandate without the consent of the person in whose interest the mandate was granted.

ARTICLE 716 (E.C. 716) RENUNCIATION BY MANDATARY

1. The mandatary may, at any time and notwithstanding any agreement to the contrary, renounce his

mandate. Renunciation is effected by notification to the mandator. When the mandate is remunerated, the mandatary must indemnify the mandator, for loss sustained by him as a result of his renunciation, if it is intempestive or unjustified.

2. The mandatary, however, has not the right to renounce a mandate given in the interest of a third party, unless there are serious reasons justifying such renunciation and unless he notifies the third party and gives him time to take such action as may be necessary to safeguard his interests.

ARTICLE 717 (E.C.717 but para.3 here not included therein) OBLIGATIONS RESULTING FROM TERMINATION OF MANDATE

1. The mandatary is bound, irrespective of the manner in which the mandate is terminated, to carry through any work he has commenced to such a condition that it is not exposed to deterioration.

2. When the mandate is extinguished by the death of the mandatary, his heirs, if they have the necessary legal capacity and knowledge of the mandate, are bound to inform the mandator immediately of the death of the mandatary and to take such steps as circumstances demand in the mandator's interests.

3. The acts performed by the mandatary before he was notified of the termination of the mandate shall be taken as valid as against the mandator or his heirs.

Section IV

Deposit

ARTICLE 718 (E.C.718) DEFINITION

Deposit is a contract whereby one person agrees to take delivery from another person of a thing which he undertakes to keep in safe custody and return in kind.

1. The Obligations of the Depository

ARTICLE 719 (E.C. 719) TAKING DELIVERY

1. The depository is bound to take delivery of the thing deposited.

2. He is not entitled to make use of the thing deposited without the express or implied authority of the depositor.

ARTICLE 720 (E.C.720) DEGREE OF CARE IMPOSED ON DEPOSITORY

1. When the deposit is gratuitous, the depository is bound to exercise, in the custody of the thing, the care which he employs in his own affairs, without, however, being bound to exercise a degree of diligence exceeding that of a reasonable person.

2. When the deposit is for remuneration, the depository must exercise in the custody of the thing deposited the diligence of a reasonable person.

ARTICLE 721 (E.C. 721 but with additions here) SUBSTITUTE FOR DEPOSITORY

The depository may not, without the express authority of the depositor, appoint a substitute to take over the custody of the thing deposited, unless he is compelled to do so by reason of urgent and absolute necessity (87), and in this case it is obligatory upon the depository to notify the depositor thereof as soon as it is possible for him to do so.

(87) The Egyptian Code ends here and what follows is added in the Libyan Code.

ARTICLE 722 (E.C. 722 with addition) RETURN OF THING DEPOSITED

1. The depository is bound to return the thing deposited as soon as he is required to do so by the depositor, unless it follows from the contract that the term of the deposit was fixed in the interests of the depository. The depository may at any time, compel the depositor to take back the thing deposited, unless it follows from the contract that the term of the depsoit was fixed in the interests of the depositor (**).

(**) The Egyptian Code ends here. Para. 2 is added by the Libyan Code.

2. The depository may not demand that the depositor prove his title to the thing deposited.

ARTICLE 723 (E.C. 723) DEALING BY HEIRS OF DEPOSITORY WITH THING DEPOSITED

When the heir of a depository sells the thing deposited in good faith, he is only liable to refund to the owner the price which he has received or to assign to the owner his rights against the purchaser. If the alienation was gratuitous, he is liable to pay the value of the thing deposited at the time of alienation.

2. Obligations of Depositor

ARTICLE 724 (E.C. 724) REMUNERATION FOR DEPOSIT

A deposit is deemed to be gratuitous. When, however, remuneration is stipulated, the depositor, in the absence of agreement to the contrary, is bound to pay such remuneration at the time the deposit ends.

ARTICLE 725 (E.C. 725) REFUND OF EXPENSES

The depositor must repay the depository any expenses incurred for the preservation of the thing deposited and indemnify him against any loss he may incur as the result of the deposit.

3. Certain Kinds of Deposit

ARTICLE 726 (E.C. 726) WHEN TO BE DEEMED A LOAN FOR CONSUMPTION

When the object of the deposit is a sum of money or another thing of a consumable nature and the depository has been authorised to make use of it, the contract is deemed to be a contract of loan for consumption.

ARTICLE 727 (E.C. 727) DEPOSITS IN HOTELS OR SIMILAR ESTABLISHMENTS

1. Proprietors of hotels, inns or other similar establishments are responsible, in the performance of their obligation to keep safely the effects brought in by travellers and residents, even for the acts of casual frequenters of their establishments.

2. They are however, liable, as regards sums of money, securities and articles of value, only up to a limit of L£50, unless they have undertaken the safe custody of such things knowing their value, or unless they have refused, without just cause, to take them in their charge, or if the loss has been caused by the gross negligence of one of their staff.

ARTICLE 728 (E.C. 728) FORFEITURE OF RIGHTS BY GUEST

1. A traveller must, as soon as he has knowledge of the theft, loss of, or damage to the thing, inform the proprietor of the hotel or the innkeeper, under pain, in the case of unjustifiable delay, of forfeiture of his rights.

2. His right of action against the hotel proprietor or innkeeper is prescribed after six months from the date of his leaving the hotel or the inn.

Section V

Judicial Custody

ARTICLE 729 (E.C. 729) DEFINITION

Judicial custody is a contract whereby the parties entrust to a third party a movable or an immovable or a property comprising both movables and immovables which is the subject of litigation or of legal rights that have not been established which such third party undertakes to safeguard, manage and return, together with fruits collected thereon, to the person whose rights thereto shall be established.

ARTICLE 730 (E.C. 730) ORDER BY COURT

The Court may order judicial custody :

1. In the cases provided for in the preceding Article, when the parties concerned do not agree to the custody;

2. When a party with an interest in a movable or an immovable has reasonable grounds to fear imminent danger to the property as a result of its remaining in the hands of its possessor;

3. In other cases provided for by law.

ARTICLE 731 (E.C.731) ORDER BY COURT IN RESPECT OF WAQF PROPERTY

Judicial custody of waqf property may be ordered in the following cases:

1. When the office of trustee is vacant or in the event of litigation between co-trustees or between persons claiming to have a right to the office of trustee, or when there is an action for the removal of the trustee, provided it is established that the judicial deposit is an indispensable measure in order to safeguard the contingent rights of the interested parties. In such a case the deposit ends upon the appointment of a trustee to the waqf, whether such appointment is provisional or definite;

2. When the waqf is in debt;

3. When one of the beneficiaries of the waqf is an insolvent debtor. The deposit will be ordered in respect of his share alone, if such share can be isolated even by means of a provisional partition, and, if not, the deposit will be ordered in respect of all the property of the waqf; in both cases the deposit will only be ordered if it is the only means of protecting the rights of the creditors against the wrongful administration or bad faith of the trustee.

ARTICLE 732 (E.C.732) APPOINTMENT OF RECEIVER

The appointment of a receiver, whether by agreement or judicially, must be made with the unanimous consent of all the interested parties. Failing such consent the receiver will be appointed by the Judge.

ARTICLE 733 (E.C.733) RIGHTS AND DUTIES OF RECEIVER

The obligations of the receiver, his rights and powers, are defined in the agreement or in the judgment ordering the deposit. In the absence of such definition, the provisions relating to deposit and to mandate will apply in so far as they do not conflict with the following provisions.

ARTICLE 734 (E.C. 734) OBLIGATIONS OF RECEIVER

1. A receiver is bound to ensure the preservation and administration of the property entrusted to him with the diligence of a reasonable person.

2. A receiver may not, either directly or indirectly, appoint one of the interested parties in his place to carry out the whole or part of his mission, without the consent of the other parties.

ARTICLE 735 (E.C. 735) ACTS OF RECEIVERS

Apart from administrative acts, a receiver must not act without the consent of all interested parties or the authority of the Court.

ARTICLE 736 (E.C. 736) REMUNERATION OF RECEIVER

A receiver may be remunerated unless he has renounced all remuneration.

ARTICLE 737 (E.C. 737) KEEPING ACCOUNTS

1. A receiver must keep regular books of account. The Judge may order his books to be stamped by the Court.

2. He is bound to render to the interested parties, at least once each year, an account of the receipts and expenditure with supporting vouchers. If the receiver is appointed by the Court, he must also deposit a copy of his account at the Court Registry.

ARTICLE 738 (E.C. 738) TERMINATION OF JUDICIAL CUSTODY

1. The deposit comes to an end either by agreement of all the interested parties or by decision of the Court.

2. The receiver must then forthwith restitute the property entrusted to him to the person chosen by the interested parties or designated by the Judge.

Chapter IV

Aleatory Contracts

Section I

Gaming and Betting

ARTICLE 739 (E.C.739 para.1 only but with variation) ALEATORY CONTRACTS

1. Any agreement relating to gaming or betting is void.

2. Nevertheless, whatever may have been voluntarily paid in settlement of debts arising from gaming or betting may not be recovered, save when he who so paid had not legal capacity.

ARTICLE 740 (E.C. 740 para. 2 only) EXCEPTIONS

1. Bets relating to sports (89), even among those not competing therein, are excepted from the provisions of the preceding Article.

2. Legally authorized lotteries are also excepted.

(89) "Sports" are calculated to give skill in arms, to foot and horse races, to tennis and other similar games (see F.C. 1966).

Section II

Life Annuities

ARTICLE 741 (E.C. 741) CREATION OF LIFE ANNUITY

1. A person may for valuable consideration or gratuitously bind himself to pay another person periodical payments during his lifetime.

2. This obligation may be created either by contract or by will.

ARTICLE 742 (E.C. 742) DURATION OF LIFE ANNUITY

1. A life annuity may be granted for the life of the beneficiary of the grantor or of a third party.

2. In the absence of an agreement to the contrary, a life annuity is presumed to have been settled for the duration of the beneficiary's life.

ARTICLE 743 (E.C. 743) VALIDITY OF CONTRACT

Subject to the requirements of the law as to the form of contracts for gifts, a contract providing for an annuity is valid only if made in writing.

ARTICLE 744 (E.C. 744) ATTACHMENT OF LIFE ANNUITY

A stipulation in the contract that a life annuity is not attachable is only valid when the life annuity is settled gratuitously.

ARTICLE 745 (E.C. 745) PERIOD OF ENJOYMENT OF LIFE ANNUITY

1. A beneficiary is only entitled to the annuity for the number of days for which the person on whose life the annuity has been settled lives.

2. When, however, it is provided that the annuity is payable in advance, the beneficiary will be entitled to the instalment which has fallen due.

ARTICLE 746 (E.C.746) NON-PAYMENT BY DEBTOR

If the grantor does not fulfil his obligations, the beneficiary may demand due performance of the contract. He may also, if the contract is for valuable consideration, apply for the resiliation of the contract together with such damages as may be due.

Section III

Contracts of Insurance

1. General Provisions

ARTICLE 747 (E.C. 747) DEFINITION

Insurance is a contract whereby the insurer undertakes, in consideration of a premium or any other pecuniary payment, to pay to the assured or the beneficiary for whose benefit the insurance is contracted, a sum of money or an annuity or any other pecuniary prestation upon the occurrence of the event or the risk specified in the contract.

ARTICLE 748 (E.C. 748) REFERENCE TO SPECIAL LAWS

Provisions relating to insurance contracts, which are not mentioned in this Code, are regulated by special laws.

ARTICLE 749 (E.C. 749) OBJECT OF INSURANCE

Any lawful economic interest which a person may have in the non-occurrence of a specified risk may be the subject of insurance.

ARTICLE 750 (E.C. 750) CONDITIONS WHICH ARE VOID

The following conditions in a policy of insurance are void :

1. A condition providing for the forfeiture of the right to the benefit of the insurance on account of a breach of the law or of regulations, unless such breach constitutes a crime or a deliberate misdemeanour;

2. A condition providing for the forfeiture of the rights of the assured on account of his delay in notifying the authorities of the occurrence of the risk insured or in producing documents, if it appears from the circumstances that there was a reasonable excuse for the delay;

3. Any printed condition relating to cases involving nullity or forfeiture, which is not shown in a clear manner;

4. An arbitration condition included in the general printed conditions of the policy and not as a special agreement distinct from the general conditions;

5. Any other clause of an arbitrary nature, the breach whereof appears to have no bearing on the occurrence of the event insured against.

ARTICLE 751 (E.C. 751) EXTENT OF OBLIGATION OF INSURER FOR INDEMNITY

The insurer shall only be bound to indemnify the assured for the actual loss arising as a result of the occurrence insured against, to the extent of the amount insured.

ARTICLE 752 (E.C. 752) PRESCRIPTION

1. Actions arising out of insurance contracts shall be barred by limitation after the expiration of three years from the date of the occurrence which gave rise to such actions.

2. This period, however, shall only run :
(a) in the event of concealment of particulars or of a false or inexact declaration of particulars, in respect of the risk insured against, from the day when the insurer had knowledge thereof;
(b) in the event of the occurrence of the risk insured against, from the date when the interested parties had knowledge thereof.

ARTICLE 753 (E.C. 753) BREACH OF PROVISIONS OF THIS SECTION

Any agreement contrary to the provisions of this section shall be void unless such agreement is in favour of the assured or of the beneficiary.

2. Certain Classes of Insurance

Life Assurance

ARTICLE 754 (E.C. 754) PAYMENT OF MATURITY

Sums which the insurer undertakes to pay, in the case of life assurance, to the assured or to the beneficiary, upon the occurrence of the event insured against or on the maturity date stipulated in the assurance policy, shall become due from the time of the occurrence of the event or upon maturity, without it being necessary to establish that the assured or the beneficiary suffered any loss.

ARTICLE 755 (E.C. 755) ASSURANCE OF LIFE OF THIRD PARTY

1. The assurance of the life of a third party is void unless such third party consents thereto in writing prior to the issue of the policy. If such third party is under legal incapacity, the contract will not be valid unless consented to by his legal representative.

2. Such consent is also necessary for the validity of the assignment of the right of the benefit under the assurance or for the validity of a mortgage on such a right.

ARTICLE 756 (E.C.756 but not para.4) SUICIDE

1. The insurer is released from the obligation to pay the sum assured if the life assured commits suicide. The insurer shall, however, be bound to pay to the persons to whom the rights revert a sum equal to the amount of the insurance reserve (90).

(90) The insurance (mathematical) reserve is the amount which, at a given time, constitutes the excess of the amount of premiums paid by all assured persons of a class of insurance in excess of the total amount paid as "sums assured" by an assurance company, up to that date. The individual reserve relating to each policy of the class in question is obtained by dividing pro rata insurance reserve of the class between the policies still in force at that time.

2. When suicide is due to an illness whereby the patient lost control of his actions, the obligation of the insurer remains in its entirety. It is for the insurer to establish that the life assured died as a result of suicide and for the beneficiary to establish that the life assured had, at the time he committed suicide, lost control of his actions.

3. When an assurance policy contains a clause by which the insurer is bound to pay the sum assured even if the suicide was committed voluntarily and knowingly by the life assured, such a clause is only enforceable if suicide was committed after two years from the date of the contract.

4. The insurer shall also not be bound to pay the sum assured if the contract is stayed by reason of non-payment of the premium and two years have not been completed since the stay ceased.

ARTICLE 757 (E.C.757) DEATH OF THIRD PARTY SUBJECT OF ASSURANCE BY WILFUL ACT OF ASSURED

1. When an assurance is taken out on the life of a person other than the assured, the insurer is released from his obligations if the assured deliberately causes the death of the life assured or if the death occurs at his instigation.

2. When a life assurance is taken out in favour of a person other than the assured, such other person shall not benefit from the assurance if he has deliberately caused the death of the life assured or if such death occurred at his instigation. In the case of an attempted homicide, the assured shall have the right to substitute another person for the beneficiary even if the beneficiary had already accepted the insurance benefit stipulated in his favour.

ARTICLE 758 (E.C. 758) SPECIFYING THE BENEFICIARIES

1. It may be agreed in life assurance that the sum assured shall be paid either to persons nominated or to persons to be nominated at a later date by the assured.

2. The assurance shall be deemed to have been made in favour of nominated beneficiaries if the assured stated in the contract that the assurance was made in favour of his spouse or his children or descendants, born or to be born, or of his heirs without referring to them by name. Should the assurance be contracted in favour of the heirs without their being named, such heirs shall be entitled to the sum assured in proportion to their respective shares in the inheritance. This right will devolve on them even if they renounce their inheritance(91).

3. By spouse is meant the person proved to have such capacity at the time of the death of the assured, and by children are meant the descendants proved to have the right to inherit at that time.

(91) In consequence of para. 2 of Article 758, the sum assured devolves, upon the death of the assured, personally to the beneficiary or beneficiaries under the policy whether heirs or not, and does not, therefore, form part of the assured's estate, so that the creditors of the estate have no claim on such an assured sum which is only subject to payment of succession duties.

ARTICLE 759 (E.C. 759) RELEASE OF ASSURED FROM CONTRACT

An assured who has undertaken to pay periodical premiums may release himself from the contract at any time by written notice sent to the insurer prior to the expiration of the current period. In such event he shall be released from payment of subsequent premiums.

ARTICLE 760 (E.C. 760) REDUCTION OF SUM ASSURED

1. In whole life contracts which do not contain a condition that the assured shall remain alive for a specified period and in all contracts providing for payment of the sum assured after a specified number of years, the assured may, after payment of at least three yearly premiums and notwithstanding any agreement to the contrary, convert the original policy into a paid-up policy against a reduction of the sum assured. This provision is subject to the condition that the event insured against is bound to occur.

2. Life assurance, if temporary (92), shall not be subject to reduction.

(92) A life assurance is deemed to be temporary if it is conditional upon the occurrence of an event and if, by its nature, it does not acquire a mathematical reserve: as, for example, air passage insurance for a single voyage or for a limited period.

ARTICLE 761 (E.C.761) LIMITS OF REDUCTION

Should the assurance be reduced, the reduction shall not exceed the following limits:

(a) In whole life contracts, the reduced sum assured shall not be less than the amount to which the assured would have been entitled if he had paid an amount equal to the assurance reserve on the date of the reduction, less 10% of the original sum assured, as if this sum had constituted a single premium payable in respect of an assurance of the same nature calculated according to the rates on the basis of which the original contract of assurance was concluded;

(b) In contracts in which it is agreed that payment of the sum assured will be made after a certain number of years, the reduced sum assured shall not be less than a fraction of the original sum assured calculated proportionately to the premiums paid.

ARTICLE 762 (E.C. 762) SURRENDER OF POLICY

1. The assured may also, after payment of at least three yearly premiums, surrender the policy, provided that the event insured against is bound to occur.

2. A temporary assurance contract is not subject to surrender.

ARTICLE 763 (E.C. 763) CONDITIONS RELATING TO REDUCTION AND SURRENDER

Conditions relating to reduction and surrender are deemed to form part of the general conditions of the assurance and should be inserted in the policy.

ARTICLE 764 (E.C. 764) EFFECT OF INCORRECT PARTICULARS AND MISSTATEMENTS

1. Neither incorrect particulars nor misstatements as to the age of the life assured shall render the assurance void, unless the true age of the life assured exceeds the limit specified in the table of rates.

2. In all other cases, if, as a result of incorrect particulars or misstatements, the premium agreed

upon is less than the premium which should have been paid, the sum assured shall be reduced in the proportion that the agreed premium bears to the premiums which should be paid on the basis of the true age.

3. Should, however, the agreed premium be higher than the premium which should have been paid on the basis of the true age of the life assured, the insurer shall be bound to refund, without interest, the excess received by him and to reduce the subsequent premiums to the limit corresponding to the true age of the life assured.

ARTICLE 765 (E.C. 765) SUBROGATION

In life assurance, the insurer who has paid the sum assured shall not be entitled to be subrogated to the rights of the assured or of the beneficiary against the person who caused the event insured against or against the person responsible therefor.

Insurance Against Loss or Damage

ARTICLE 766 WHEN INSURANCE AGAINST LOSS OR DAMAGE VOID

A contract of insurance against loss or damage is void if, at the commencement of such insurance, the insured has no interest for which he may be compensated in case of damage.

ARTICLE 767 AMOUNT OF COMPENSATION

The insurer is bound to indemnify the insured for the loss or damage occasioned by the accident in the manner and to the extent provided for by the contract.

ARTICLE 768 DEFECTS IN THING ASSURED

1. The insurer is responsible for the loss or damage even if this results from an inherent fault in the thing insured, provided that he had knowledge of the same.

2. The insurer shall not be liable for anticipated profits unless he has expressly bound himself therefor.

ARTICLE 769 PARTIAL INSURANCE

Unless otherwise agreed, when the insurance covers part only of the value of the thing insured at the time of the accident, the insurer is only liable for damages proportionate to such part.

ARTICLE 770 ASSESSMENT OF VALUE OF THING INSURED

1. In ascertaining the loss or damage the things lost or damaged shall not be valued at any amount higher than that of their value at the time of the accident.

2. The value of the things insured, however, may be established at the time of the making of the contract by means of an estimate accepted in writing by the parties.

3. The value of the things insured declared in the policy or other document is not tantamount to an estimate.

4. In crop insurance the damage is determined on the basis of the value of the crops when they mature or at the time when they would ordinarily be harvested.

ARTICLE 771 INSURANCE FOR AN AMOUNT IN EXCESS OF THE VALUE OF THE PROPERTY

1. Insurance obtained for an amount in excess of the actual value of the property is not valid if there was fraud on the part of the insured; if the insurer acted in good faith, he is entitled to the premiums for the current period of insurance.

2. If there was no fraud the contract is effective up to the limit of the actual value of the things insured and the insurer has the right to obtain for the future a proportionate reduction in the premium.

ARTICLE 772 INSURANCE TAKEN OUT WITH SEVERAL INSURERS

1. If several insurance policies are taken out separately against the same risk with several insurers, the insured must give notice of all the policies to each insurer.

2. If the insured in bad faith fails to give such notice, the insurers are not bound to pay the indemnity. In the case of accident the insured shall give notice thereof to all the insurers, in accordance with Articles 775 to 777, indicating to each insurer the name of the others. The insured may demand from each insurer the indemnity due in accordance with their respective contracts provided the total amount collected from each one of them does not exceed the amount of the damage.

3. An insurer who has made payments has the right to recover from the other insurers an aliquot part in the ratio of the indemnities due in accordance with their respective contracts.

4. If an insurer is insolvent his share is divided among the other insurers.

ARTICLE 773 CO-INSURANCE

When the same insurance or the insurance against risks relating to the same property is divided among several insurers in specified quotas, each insurer is liable for the payment of the indemnity only in proportion to his respective share, even if there is only one contract signed by all the insurers.

ARTICLE 774 EARTHQUAKES AND WARS

Unless otherwise agreed, the insurer is not liable for damages caused by earthquake, war, insurrection of popular uprisings.

ARTICLE 775 NOTIFICATION OF ACCIDENT

1. The insured must give notice of the accident to the insurer or to the agent authorized to enter into the contract, within three days from the time when the accident occurred or from the time when the insured acquired knowledge thereof.

2. Such notice is not necessary if the insurer or the agent authorized to enter into the contract have taken part, within that time, in salvage operations or in an investigation to establish the facts of the accident.

3. In the case of insurance against mortality of live stock notice shall be given within 24 hours, unless otherwise agreed.

ARTICLE 776 SALVAGE OF PROPERTY INSURED

1. The insured must do everything in his power to avoid or diminish the damage.

2. Expenses sustained for that purpose by the insured are chargeable to the insurer in proportion to the value of the property insured as compared with the value of the property at the time of the accident, even if the amount of such expenses, added to those arising from the damage, are in excess of the amount of the insurance and even if the object was not accomplished, unless the insurer proves that such expenses were made without due consideration.

3. The insurer is liable for material damages to the insured property arising from the measures taken by the insured to avoid or reduce the damages caused by the accident, unless the insurer proves that such measures were taken without due consideration.

4. The intervention of the insurer for the purpose of salvaging or preserving the insured property does not prejudice his rights.

5. An insurer who takes part in salvaging operations shall, upon request of the insured, advance the sums necessary for the expenses incurred in salvaging, or contribute thereto in proportion to the value for which the property was insured.

ARTICLE 777 FAILURE TO NOTIFY OR TO SALVAGE

1. An insured person who in bad faith fails in his duty to give notice of the accident or to salvage the insured property loses his right to the indemnity.

2. If the non-performance of such duty is caused by negligence of the insured, the insurer has the right to reduce the amount of the indemnity in proportion to the injury suffered by him.

ARTICLE 778 RIGHT OF SUBROGATION OF INSURER

1. An insurer who has paid the indemnity is subrogated, by the amount of the said indemnity, to the rights of the insured against the persons who are liable for the damage.

2. Except in the case of fraud, subrogation does not take place when the damage is caused by the children, foster-children, ascendants or other relatives or persons connected by affinity to the insured and living permanently with him, or by domestic servants.

3. The insured is liable to the insurer for any prejudice caused to the latter's right of subrogation.

4. The provisions of this Article are also applicable to workmen's compensation insurance and accident insurance.

ARTICLE 779 CIVIL LIABILITY INSURANCE

1. In civil liability insurance, the insurer is bound to indemnify the insured harmless from civil liability against third persons in the amount which the insured must pay to such persons on consequence of acts occurring during the period of the insurance as a result of the liability assumed in the contract by the insurer. Damages resulting from fraudulent acts are excluded.

2. The insurer, giving advance notice to the insured, has the power to pay directly to the injured third party the indemnities due, and is obliged to make such payment directly if the insured demands it.

3. The expenses sustained in defending a suit of the injured party against the insured are chargeable to the insurer to the extent of the sum assured. However if a sum greater than the amount of the insurance is due to the said injured party, the Court costs are divided between the insurer and the insured in proportion to the interest of each.

4. An insured who is made a defendant by the injured party may call upon the insurer to appear in the suit.

ARTICLE 780 ALIENATION OF INSURED PROPERTY

1. Alienation of the insured property is not cause for cancellation of the insurance contract.

2. An insured person who fails to give notice to the insurer of the alienation which has taken place, or has failed to give notice to the purchaser of the existence of the insurance contract, remains liable for the payment of the premiums falling due after the date of the alienation.

3. The rights and duties of the insured vest in the purchaser if the latter, having received notice of the existence of the contract of insurance, fails to declare to the insurer, through registered mail written ten days from the expiration of the first premium period following the alienation, that he does not intend to take over the contract. In this case the insurer is entitled to the premiums corresponding to the current period of insurance.

4. The insurer may withdraw from the contract within ten days from the day in which he received notice of the alienation, giving fifteen days advance notice, which may also be given by registered mail.

5. If the policy issued was an order or bearer policy no notice of the alienation need be given to the insurer, and neither the insurer nor the purchaser may withdraw from the contract.

Chapter V

Suretyship

Section I

The Elements of Suretyship

ARTICLE 781 (E.C. 772) DEFINITION

Suretyship is a contract whereby a person guarantees the performance of an obligation by giving an undertaking to the creditors to fulfil such obligation should the debtor fail to do so.

ARTICLE 782 (E.C. 773) PROOF OF SURETYSHIP

Suretyship can only be established by writing, even if the principal obligation can be established by oral evidence.

ARTICLE 783 (E.C. 774) SOLVENCY AND DOMICILE OF SURETY

When a debtor undertakes to offer a surety, he is bound to produce a solvent person residing in Libya or an adequate real security instead of the surety.

ARTICLE 784 (E.C. 775) SURETYSHIP WITHOUT KNOWLEDGE OF DEBTOR

Suretyship may be given without the knowledge and even in spite of the opposition of the debtor.

ARTICLE 785 (E.C. 776) VALIDITY OF SURETYSHIP

Suretyship is valid only if the obligation to which it applies is valid.

ARTICLE 786 (E.C. 777) SURETYSHIP OF DEBTOR LACKING CAPACITY

When a person guarantees the obligation of a debtor who is legally incapable and such guarantee is given because of the debtor's lack of capacity, the surety is bound to perform the obligation if the guaranteed debtor fails to do so himself.

ARTICLE 787 (E.C. 788) SURETYSHIP OF FUTURE DEBT

1. Suretyship may be entered into in respect of a future debt, if the amount for which the guarantee is given is fixed beforehand. Suretyship may also be entered into in respect of a conditional liability.

2. A surety, however, who has given his guarantee for a future debt, but has not fixed the duration of such guarantee, may revoke his guarantee at any time provided that the guaranteed debt has not been created.

ARTICLE 788 (E.C. 779) SURETYSHIP OF COMMERCIAL DEBT

1. Suretyship entered into in respect of a commercial debt is deemed to be a civil act, even if the surety is a trader.

2. The suretyship resulting from backers' signatures and endorsements on negotiable instruments, is always deemed to be a commercial act.

ARTICLE 789 (E.C. 780) RESTRICTIONS UPON SURETYSHIP

1. Suretyship cannot be entered into in respect of a sum greater than that due by the debtor, nor can it be subject to more onerous conditions than the debt guaranteed.

2. Suretyship may be entered into in respect of a smaller sum and subject to less onerous conditions.

ARTICLE 790 (E.C. 781) EXTENT OF SURETYSHIP

In the absence of an express agreement, suretyship extends to the accessories of the debt, to the expenses of the first demand for payment and to the expenses incurred after notice has been given to the surety.

Section II

The Effects of Suretyship

1. The Relation Between Surety and Creditor

ARTICLE 791 (E.C. 782) DISCHARGE OF SURETY BY DISCHARGE OF DEBTOR

1. A surety is discharged simultaneously with the debtor and is entitled to avail himself of all the defences that are open to the debtor.

2. When, however, the defence raised by the debtor is based on his lack of legal capacity, the surety who was cognisant thereof at the time the contract was entered into is not entitled to raise this defence

ARTICLE 792 (E.C. 783) ACCEPTANCE OF PROPERTY IN PAYMENT OF DEBT

When the creditor has accepted a thing of another kind in payment of the debt, the surety is discharged, even if the thing given in payment is revendicated.

ARTICLE 793 (E.C. 784) DISCHARGE OF SURETY BY FAULT OF CREDITOR

1. A surety is discharged to the extent of the value of any warranties which the creditor has lost by his own fault.

2. The warranties referred to in this Article are the securities assigned to guarantee the debt, even if they were provided after the suretyship was entered into; also any securities provided in accordance with the law.

ARTICLE 794 (E.C. 785) CREDITOR'S DELAY IN TAKING PROCEEDINGS

1. A surety is not discharged merely by reason of the creditor's delay in taking proceedings or of the creditor not taking proceedings.

2. A surety is, however, discharged if the creditor does not take proceedings against the debtor within six months from the date of the summons served on him by the surety, unless the debtor himself provides an adequate guarantee to the surety.

ARTICLE 795 (E.C. 786) BANKRUPTCY OF DEBTOR

When a debtor becomes bankrupt, the creditor is bound to prove his debt in the bankruptcy, under penalty of being deprived of his remedy against the surety to the extent of the loss suffered by the surety as a result of the creditor's failure to prove his debt.

ARTICLE 796 (E.C. 787) OBLIGATIONS OF CREDITOR

1. A creditor is bound to hand over to the surety, at the time of the discharge of the debt, all documents that are necessary to enable him to exercise his right of action.

2. When the debt is secured by a pledge of a movable or by a right of retention on a movable, the creditor must surrender such securities to the surety.

3. When, however, the debt is secured by a charge on immovable property, the creditor must comply with the formalities required for the transfer of such security. The expenses of such transfer are borne by the surety, subject to his right of action against the debtor.

ARTICLE 797 (E.C. 788) PROCEEDINGS BY CREDITOR AGAINST SURETY

1. A creditor has not the right to take proceedings against the surety alone, unless he has first taken proceedings against the debtor.

2. He can only levy execution on the property of the surety after he has distrained all the property of the debtor; it is for the surety, in such a case, to claim this right.

ARTICLE 798 (E.C. 789) DEMAND BY SURETY FOR DISTRAINT UPON DEBTOR'S PROPERTY

1. When a surety demands that the debtor's property shall first be distrained, he must at his own expense indicate to the creditor property of the debtor sufficient to satisfy the whole debt.

2. Property so indicated by the surety will not be taken into account if it is situated outside Libyan territory, or if it is the subject of a dispute.

ARTICLE 799 (E.C. 790) RESPONSIBILITY OF CREDITOR FOR DEBTOR'S INSOLVENCY

When the surety has indicated property belonging to the debtor, the creditor will be responsible to the surety for the debtor's insolvency if the creditor fails to take the necessary proceedings in due time.

ARTICLE 800 (E.C. 791) SURETYSHIP UPON REAL PROPERTY

When a real security is assigned either by law or by agreement as guarantee of a debt, and suretyship is also entered into subsequently or at the same time, without a stipulation that the surety is jointly and severally liable with the debtor, the surety's property can only be seized and sold after the real security assigned as guarantee has been realized.

ARTICLE 801 (E.C. 792) PLURALITY OF SURETIES

1. When there are several sureties for the same debt by one contract and it does not provide for their joint and several liability, the debt is apportioned between them and the creditor has only a right of action against each of the sureties to the extent of his share in the suretyship.

2. If several sureties have undertaken to guarantee the same debt by successive contracts, each surety is liable for the whole debt, unless he has reserved the right to apportion the liability amongst the co-sureties.

ARTICLE 802 (E.C. 793) JOINT AND SEVERAL GUARANTEE BY SURETY WITH DEBTOR

A surety who has jointly and severally guaranteed the debtor cannot demand that the debtor's property first be distrained.

ARTICLE 803 (E.C. 794) DEFENCES AVAILABLE TO JOINT AND SEVERAL SURETY WITH DEBTOR

A surety who has jointly and severally guaranteed the debtor may avail himself of all the defences which a surety who is not jointly and severally liable may invoke with regard to the debt.

ARTICLE 804 (E.C. 795) JUDICIAL AND LEGAL SURETIES

Judicial and legal sureties are always jointly and severally liable.

ARTICLE 805 (E.C. 796) PARTITION OF DEBT AMONG JOINT AND SEVERAL SURETIES

When there are several sureties jointly and severally liable, a surety who has paid the whole debt on maturity may call upon each of the other sureties to pay his share of the debt as well as a proportional part in the share of any joint and several surety who is insolvent.

ARTICLE 806 (E.C. 797) SURETY GUARANTEED BY ANOTHER

A surety may be guaranteed by another surety. In such a case, the creditor may not call upon the principal surety's guarantee until he has taken action against the principal surety, unless the two sureties are themselves jointly and severally liable.

2. The Relationship Between Surety and Debtor

ARTICLE 807 (E.C. 798) NOTICE OF PAYMENT

1. A surety must give the debtor notice before paying, on pain of forfeiture of his right of action against the debtor, if the latter has himself paid the debt or has grounds, at the date of maturity, for having the debt declared void or extinguished.

2. If the debtor does not object to the payment, the surety retains his right of action against him, even though the debtor has himself paid the debt or had grounds for having the debt declared void or extinguished.

ARTICLE 808 (E.C. 799) SUBROGATION OF SURETY TO RIGHTS OF CREDITOR

A surety who has paid the debt is subrogated to all the rights of the creditor against the debtor; if, however, he pays only part of the debt, the surety can only exercise such rights in respect of that part he has paid after the creditor has recovered from the debtor the whole of the debt due.

ARTICLE 809 (E.C. 800) RIGHT OF ACTION OF SURETY AGAINST DEBTOR

1. A surety who has paid the debt has a right of action against the debtor whether the suretyship was entered into with or without the knowledge of the debtor.

2. This right of action includes the right to claim the capital amount of the debt, interest and expenses. The surety, however, only has a right of action in respect of those expenses which he has incurred from the date he has notified the principal debtor of the proceedings taken against him.

3. A surety is entitled to interest at the legal rate on all amounts that he has paid from the date of payment.

ARTICLE 810 (E.C. 801) PLURALITY OF DEBTORS

When there are several debtors jointly and severally liable for one and the same debt, a surety who has guaranteed them all, has a remedy against each of them for all that he has paid in respect of the debt.

SECOND PART

REAL RIGHTS

THE PRINCIPAL REAL RIGHTS

Section I

The Right of Ownership in General

1. Limits and Sanctions

ARTICLE 811 (E.C. 802) RIGHTS OF OWNER

The owner of a thing has alone, within the limits of the law, the right to use, to enjoy and to dispose of it.

ARTICLE 812 (E.C. 803) EXTENT OF RIGHTS OF OWNER

1. The owner of a thing also owns everything that constitutes an essential element of the thing owned and which cannot be separated therefrom without the thing owned perishing, deteriorating or changing.

2. The ownership of the surface of land includes that which is above and below, as far as it can be usefully enjoyed in height and depth (93), subject to special laws concerning quarries and mines.

3. The ownership of the surface of land may, by law or by agreement, be separated from that which is above it and that which is below it.

(93) From here to the end of this paragraph is an addition and is not contained in E.C.

ARTICLE 813 (E.C. 804) PRODUCTS AND ACCESSORIES OF THING OWNED

In the absence of a provision of the law or of an agreement on the contrary, ownership carries with it the right to all fruits, products and accessories of the thing owned.

ARTICLE 814 (E.C. 805) DEPRIVATION OF OWNERSHIP

No one can be deprived of his property except in the cases and in the manner provided for by law and upon payment of fair compensation.

2. Restrictions on Right of Ownership

ARTICLE 815 (E.C. 806) EXTENT OF RIGHT OF USE OF THING OWNED

An owner must, in the exercise of his rights, comply with the laws, decrees and regulations having for their object the interests of the public and of individuals. He must also observe the following provisions.

ARTICLE 816 (E.C. 807) PROTECTION OF NEIGHBOURS

1. The owner must not exercise his rights in an excessive manner detrimental to his neighbours' property.

2. The neighbour has no right of action against his neighbour for the usual unavoidable inconveniences resulting from neighbourhood, but he may claim the suppression of such inconveniences if they exceed the usual limits, taking into consideration in this connection custom, the nature of the properties, their respective situations and the use for which they are intended. A licence issued by a competent authority is not a bar to the exercise of such a right of action.

ARTICLE 817 (E.C. 808) PRIVATE CANALS OR DRAINS

1. A person who constructs a private canal or drain in conformity with the regulations in force has the exclusive right to its use.

2. Neighbouring owners may, however, use the canal or drain for the irrigation or the drainage required for their land after the owner of the canal or drain has used it to the satisfaction of his own needs. The neighbouring owners must, in such a case, contribute to the cost of construction and of maintenance of the canal or drain, each in proportion to the area of land benefiting thereby.

ARTICLE 818 (E. C. 809) PASSAGE OF WATER

An owner must allow a passage through his land of the water necessary for the irrigation of land situate at a distance from the source of the water and of drainage water coming from the neighbouring properties, so that it may flow into the nearest public drain, provided that he is adequately compensated.

ARTICLE 819 (E. C. 810) COMPENSATION FOR DAMAGE CAUSED BY CANALS OR DRAINS

When damage is caused to land by a canal or drain which crosses it, either by reason of failure to clear the drain or by reason of the bad state of its banks, the owner of the land has the right to claim adequate compensation for the damage done.

ARTICLE 820 (E. C. 811) REPAIRS OF CANALS OR DRAINS

In the absence of an agreement between the common users of a canal or drain as to the execution of the necessary repairs, they may, upon the demand of one of them, be compelled to contribute to the cost of such repairs.

ARTICLE 821 (E. C. 812) RIGHT OF WAY

1. An owner whose land is cut off from or has no adequate exit on to, a public road, shall if he cannot obtain an exit to the public road without great expense or difficulty, have a right of way over the neighbouring land as may be necessary for the normal working and use of his land and as long as his land continues to be so cut off, subject to payment of fair compensation. This right of way must be exercised over land and at the place where the passage causes the least possible damage.

2. If the land is cut off from the public roads as a result of the property having been divided in consequence of a legal disposition, and it is possible to provide an adequate right of way over parts of the land so divided, the right of way can be claimed only over those parts.

ARTICLE 822 (E. C. 813) BOUNDARIES OF ADJOINING PROPERTIES

Every owner has the right to compel his neighbour to place boundary marks along the boundaries of their adjoining properties. The cost of such delimitation will be shared between them.

ARTICLE 823 (E. C. 814) PARTY WALLS

1. An owner of a party wall has the right to make use of it for the purpose for which it was intended and to use it for the support of beams to carry his own roof, provided that the wall has not to support too great a weight for its strength.

2. When a party wall becomes unfit for the purpose for which it is normally intended, the cost of repairs or reconstruction will be borne by the co-proprietors in proportion to their respective shares.

ARTICLE 824 (E. C. 815) VARIATION OF PARTY WALLS

1. An owner may, if he has good reason to do so, heighten a party wall, provided that he does not thereby cause serious prejudice to his co-owner. He alone must bear the cost of heightening as well as of the maintenance of the part so heightened and carry out the necessary work, so that the wall may support the extra weight due to the heightening without its strength being diminished.

2. If the party wall is not able to support the heightening, the co-owner who desires to heighten the wall must reconstruct the wall entirely at his own cost, in such a way as the thickening shall, as far as possible, abut on his side. The reconstructed wall remains, apart from the heightened parts, a party wall, but the neighbour who has reheightened the wall cannot claim any compensation whatever.

ARTICLE 825 (E. C. 816) PARTICIPATION OF NEIGHBOUR IN HEIGHTENING OF PARTY WALL

A neighbour who has not contributed to the expenses of heightening may become co-proprietor of the heightened part if he pays half the cost thereof and the value of half the ground covered by the increased thickness, if any.

ARTICLE 826 (E. C. 817) PRESUMPTION THAT SEPARATING WALL PARTY WALL

In the absence of proof to the contrary, a wall which at the time of its construction separated two buildings is deemed to be a party wall up to the point at which it ceases to be a common wall to the two buildings.

ARTICLE 827 (E.C.818) DEMOLITION OF WALL WITHOUT GOOD REASON

1. An owber cannot compel his neighbour to walk on his property or to assign to him part of a wall or of the land on which the wall is constructed, except in a case provided for in Article 825 (94).

(94) Art. 816 in E.C.

2. An owner of a wall may not, however, demolish the wall on his own initiative if the demolition injures his neighbour whose property is closed in by it, unless he has good reason for so doing.

ARTICLE 828 (E.C. 819) DIRECT VIEW

1. A neighbour is not entitled to have a direct view over his neighbour at a distance of less than one metre. This distance is measured from the outside face of the wall in which the opening is made or from the outside line of the balcony or other projection.

2. If a direct view has been acquired by prescription of a distance of less than one metre over the property of a neighbour, such neighbour cannot himself build at a distance of less than one metre, measured in the manner indicated above, along the whole length of the building in which the view was opened.

ARTICLE 829 (E.C. 820) OBLIQUE VIEW

A neighbour is not entitled to have an oblique view over the property of his neighbour at a distance less than fifty centimetres from the outside edge of the opening. This prohibition ceases to have effect if the oblique view over the neighbouring property is at the same time a direct view over a public road.

ARTICLE 830 (E.C. 821) OPENING OF LIGHT SHAFT

No distance is laid down for an opening for a light shaft if the base of the opening is above the limit of the normal height of a man and if the opening is intended only for air and light and cannot give a view over the neighbouring property.

ARTICLE 831 (E.C. 822) FACTORIES

Factories, wells, steam engines and establishments injurious to neighbours must be constructed at the distance and subject to conditions laid down by regulations.

ARTICLE 832 (E.C. 823) STIPULATIONS FOR INALIENABILITY

1. If a contract or a will contains a clause stipulating the inalienability of a property, such a clause will only be valid if based on a legitimate reason and limited to a reasonable duration.

2. The reason is deemed to be legitimate if the inalienability if stipulated with a view to protecting a lawful interest of the person disposing of the property or of the person in whose favour the property is disposed of, or of a third party.

3. A reasonable duration may extend for the life of the person disposing of, or the person in whose favour the property is disposed of, or of a third party.

ARTICLE 833 (E.C. 824) CONTRAVENTION OF STIPULATION FOR INALIENABILITY

When the clause as to inalienability in the contract or in the will is valid in accordance with the provisions of the preceding Article, any alienation contrary to such a clause is void.

3. Joint Ownership

Provisions Relating to Joint Ownership

ARTICLE 834 (E.C. 825) DEFINITION

When two or more persons are owners of the same thing, but their respective shares are not divided, they are co-owners, and, in the absence of proof to the contrary, their shares are deemed to be equal.

ARTICLE 835 (E.C. 826) RIGHTS OF CO-OWNERS IN JOINT OWNERSHIP

1. Every co-owner in common is the absolute owner of his share. He may alienate his share and collect the fruits thereof and make use of his share provided he does not injure the rights of the other co-owners.

2. If, however, the alienation relates to a specific part in the property held in common, and such part does not come within the share of the settler when a partition is made, the right of the acquirer is transferred to the part that has devolved on the settler as a result of the partition with effect from the moment of the alienation. If the acquirer did not know that the settler was not the owner of the specific part of the property which he has alienated he shall have the right to demand the cancellation of the alienation.

ARTICLE 836 (E.C. 827) MANAGEMENT OF PROPERTY IN JOINT OWNERSHIP

In the absence of an agreement to the contrary, the management of a property held in common belongs jointly to all the owners in common.

ARTICLE 837 (E.C. 828) ORDINARY ACTS OF MANAGEMENT

1. A decision taken by the majority of co-owners as to ordinary acts of management is binding on all of them. The majority shall be calculated on the basis of the value of the shares. Failing a majority, the Court may, upon the application of any one of the co-owners, take such measures as may be necessary in the circumstances and appoint, if need be, a manager to manage the property owned in common.

2. The majority may select a manager and may also establish rules for the management and fuller enjoyment of the property owned in common, which rules shall also be binding upon the successors in title of all the co-owners whether such successors in title are universal or particular.

3. A co-owner who conducts the management of the joint property, without any objection being raised by the other co-owners, is considered to be their mandatary.

ARTICLE 838 (E.C. 829) MODIFICATIONS OR CHANGES IN EXCESS OF NORMAL SCOPE OF MANAGEMENT

1. Co-owners who possess at least three quarters of the property in common may decide, with a view to obtaining greater enjoyment of the property, to make essential modifications or changes, in the use for which the property was intended, which exceed the normal scope of management, provided that these decisions are notified to the other co-owners. Dissenting co-owners have a right of action in the Courts within two months from the date of notification.

2. The Court before which such an action is brought may, if it approves the decision taken by the majority, also order measures of expediency. The Court may, in particular, order that security be given to the dissenting co-owner so as to guarantee any compensation that may become due to him.

ARTICLE 839 (E.C. 830) PRESERVATION OF PROPERTY IN JOINT OWNERSHIP

Every co-owner may also, even without the consent of the other co-owners, take measures necessary for the preservation of the property in common.

ARTICLE 840 (E.C. 831) COST OF MANAGEMENT AND PRESERVATION

In the absence of any provisions to the contrary, the cost of the management of a property held in common, as well as the cost of its preservation, the taxes payable thereon, and all other charges resulting from the common holding or connected with the property held in common, shall be borne by all the co-owners each proportionately to his share.

ARTICLE 841 (E.C. 832) RIGHT TO ALIENATE PROPERTY JOINTLY OWNED

Co-owners who possess three quarters at least of the property held in common may decide to alienate the property, provided that their decision is founded on serious grounds and that the decision is notified to the other co-owners. A dissenting co-owner has a right of action before the Court within a delay of two months from the date of notification. The Court will decide, in accordance with the circumstances in a case where the partition of the property held in common is contrary to the interests of the co-owners, whether the alienation of the property should be carried out.

ARTICLE 842 (E.C. 833) RIGHT OF CO-OWNER TO REPURCHASE

1. A co-owner of a movable or of a property consisting of movables and immovables may, before partition, repurchase any undivided share which has been sold by another co-owner to a third person. Such repurchase must be made within a delay of thirty days from the day on which he had knowledge of the sale or from the day on which the sale was notified to him. The right of repurchase is exercised by means of a summons notified to both the vendor and the purchaser. The co-owner who has repurchased the share sold will be subrogated into all the rights and obligations of the purchaser if he compensates him for all that he has spent.

2. If several co-owners exercise their right to repurchase, each of them shall have the right to repurchase a part proportional to his share.

Cessation of Joint Ownership by Partition

ARTICLE 843 (E.C. 834) RIGHT TO DEMAND PARTITION OF JOINTLY OWNED PROPERTY

Every co-owner may demand the partition of property held in common, unless he is bound to remain a co-owner in common by reason of a provision of the law or of an agreement. It is not permitted, by agreement, to prohibit partition for a period exceeding five years. When the period stipulated does not exceed five years, the agreement shall bind a co-owner and his successors in title.

ARTICLE 844 (E.C. 835) VOLUNTARY PARTITION

Co-owners may, if they are all in agreement, divide the property held in common in whatever manner they deem fit. If one of them is subject to legal incapacity, the formalities laid down by law will have to be observed.

ARTICLE 845 PARTITION BY COURT

If the co-owners do not agree to partition of the property held in common then must the co-owner desiring partition have recourse to the Court demanding that the same be made in accordance with the provisions of the Civil and Commercial Procedure Code.

ARTICLE 846 (E.C. 842) RIGHTS OF CREDITORS

1. The personal creditors of any co-owner may oppose a partition in kind or a sale by auction without their intervention in the proceedings. Such opposition must be notified to all the co-owners and has the effect of compelling the co-owners to join the opposing creditors in every stage of the proceedings otherwise the partition will be without effect as regards such opposing creditors. In any case, inscribed creditors must be joined before an action for partition is introduced.

2. If the partition has already taken place, the creditors who have not intervened cannot attack it unless there has been fraud.

ARTICLE 847 (E.C. 843) EFFECTS OF PARTITION

Each co-partitioner is deemed to have been owner of the part of the property that falls to him from the day that he became co-owner in common and never to have been owner of the other parts.

ARTICLE 848 (E.C. 844) RECIPROCAL WARRANTY BETWEEN CO-PARTITIONERS

1. The co-partitioners warrant each other against interference or eviction due to a cause that existed previous to the partition. Each one of them is liable, in proportion to his share to indemnify a co-partitioner entitled to such indemnity, on the basis of the value of the property at the moment of partition. If one of the co-partitioners happens to be insolvent, the share falling on him will be borne by the co-partitioner entitled to the indemnity and all the solvent co-partitioners.

2. No such warranty, however, exists when there is an express agreement waiving the warranty in the particular case which would have given rise to the warranty. The warranty also ceases to be binding if the eviction is due to a fault of the co-partitioner himself.

ARTICLE 849 (E.C. 845) RESCISSION OF PARTITION

1. Partition by agreement may be rescinded if one of the co-partitioners succeeds in proving that he has been injured to the extent of more than one-fifth of his share, on the basis of the value of the property at the time of partition.

2. The action for rescission must be commenced within the year following the partition. The defendant can stop the action and prevent the new partition by giving the plaintiff the amount by which his share is short in money or in kind.

ARTICLE 850 (E.C. 846 but para. 2 omitted) PROVISIONAL PARTITION

By a provisional partition, co-owners agree to allot to each other the enjoyment of a divided part of the property equal to each of their shares in the property held in common in consideration of a renunciation in favour of each other of the right of enjoyment of the other parts. Such an agreement cannot be entered into for a duration of more than five years. If no duration has been fixed, or the agreed period has expired, and no new agreement has been entered into, the period of the provisional partition will be for a year renewable, unless one of the co-owners gives notice of termination to his co-owners three months before the end of the current year.

ARTICLE 851 (E.C. 847) OTHER CONDITIONS UNDER WHICH PROVISIONAL PARTITION TAKES PLACE

A provisional partition also takes place when the co-owners agree that each of them shall, the one after the other, enjoy all of the property held in common for a period corresponding to his share.

ARTICLE 852 (E.C. 848) PROVISIONS GOVERNING PROVISIONAL PARTITION

A provisional partition is governed, as regards its validity against third parties, the capacity of co-partitioners, their rights and obligations, and means of proof, by the provisions of the law relating to contracts of lease, in so far as they are not incompatible with the nature of such a partition.

ARTICLE 853 (E.C. 849) PROVISIONAL PARTITION DURING PROCESS OF FINAL PARTITION

1. The co-owners may agree, during the process of a final partition, to enter into a provisional partition. Such provisional partition will remain in force until the conclusion of the final partition.

2. If the co-owners cannot reach an agreement for a provisional partition, such a partition may, upon the application of one of the co-owners, be ordered by the competent Judge upon the advice, if necessary, of an expert.

Obligatory Joint Ownership

ARTICLE 854 (E.C. 850) WHERE PARTITION NOT PERMISSIBLE

The co-owners of a property held in common cannot demand its partition if it follows from the use to which the property is intended, that it should always remain in common.

Family Joint Ownership

ARTICLE 855 (E.C. 851) CREATION OF FAMILY JOINT OWNERSHIP

The members of the same family who have a common occupation or interest may agree in writing to create a family joint ownership. The joint ownership consists either of an inheritance which the members of a family agree to leave wholly or partly in joint ownership or of any other property belonging to them which they agree to place in family joint ownership.

ARTICLE 856 (E.C.852) PERIOD FOR WHICH FAMILY JOINT OWNERSHIP MAY BE CREATED

1. A family joint ownership may be created by agreement for a period not exceeding fifteen years. Each one of the co-owners may, however, if there are serious grounds to do so, apply to the Court for authority to withdraw his share of the joint property before the end of the agreed term.

2. When no period is fixed for such joint ownership, each one of the co-owners may withdraw his share after six months from the day he gives notice to this effect to the other co-owners.

ARTICLE 857 (E.C.853) DEALING IN PROPERTY JOINTLY OWNED BY FAMILY

1. Co-owners cannot demand partition so long as the family joint ownership continues, and no co-owner can dispose of his share in favour of a person who is not a member of the family without the consent of all the co-owners.

2. If a person who is not a member of the family acquires as a result a voluntary or forced alienation, the share of one of the co-owners, he only becomes a partner in the family joint ownership if he and the other co-owners consent thereto.

ARTICLE 858 (E.C.854) MANAGEMENT OF JOINTLY OWNED FAMILY PROPERTY

1. Co-owners who own the majority in value of the shares, may appoint amongst themselves one or more managers. Subject to any agreement to the contrary, the manager may introduce such changes in the intended use of the property held in common as may ensure a better enjoyment of the property.

2. A manager may be discharged in the same manner as he was appointed, notwithstanding any agreement to the contrary. The Court may also, upon the demand of any owner, discharge him if there are serious grounds to do so.

ARTICLE 859 (E.C.855) SPECIAL PROVISIONS AS TO FAMILY JOINT OWNERSHIP

Subject to the preceding provisions, family joint ownership will be governed by the provisions of the law relating to joint property and to mandate.

Ownership of Storeys in Buildings

ARTICLE 860 (E.C.856) JOINT OWNERSHIP OF STOREYED BUILDINGS

1. In the absence of any provisions to the contrary in the title deeds, when the different storeys or various apartments of a building belong to different owners, such owners are considered co-owners of the ground and of the parts of the building intended for the common use of all, especially of the foundations, the main walls, the main entrances, yards, roofs, lifts, passages, corridors, the floor supports and pipes of all kinds with the exception of pipes inside the storeys or apartments.

2. These parts of the building held in common cannot be divided; each of the owners has a share in these parts in proportion to the value of his share in the building. No owner can dispose of his share in the parts held in common independently, of his share in the building.

3. The inner walls which separate two apartments belong as party property to the owners of these two apartments.

ARTICLE 861 (E.C.857) MODIFICATION OF PART HELD IN COMMON

1. Every owner may, with a view to enjoying his part of the building, utilize the parts held in common, in accordance with the use for which they are intended, provided he does not prevent the other owners exercising their rights.

2. No modifications can be made to the parts held in common, even in the event of reconstruction, without the consent of all the owners, unless such modification, made by one of the owners at his own cost, is of such a nature as to facilitate the use of the parts held in common, does not change the use for which they were intended and is not prejudicial to the other owners,

ARTICLE 862 (E.C.858) PRESERVATION OF PARTS HELD IN COMMON

1. Every owner must participate in the cost of the preservation, maintenance, management and reconstruction of the parts held in common. Subject to any agreement to the contrary the share of every owner in these costs will be calculated in proportion to the value of his share in the building.

2. No owner can renounce his share in the parts held in common with a view to avoiding participation in the costs referred to above.

ARTICLE 863 (E.C. 859) DUTIES OF OWNER OF LOWER STOREY

1. The owner of a lower storey is bound to execute works and repairs necessary to prevent the higher storey from falling.

2. If he refuses to execute the necessary repairs, the Judge may order the sale of the lower storey. In any case the Judge may order the execution of urgent repairs.

ARTICLE 864 (E.C. 860) COLLAPSE OF BUILDING

1. If the building falls down, the owner of the lower storey is bound to rebuild his storey, failing which the Judge may order the sale of the lower storey, unless the owner of the upper storey offers to rebuild the lower storey himself at the cost of the owner of the lower storey.

2. In this latter event, the owner of the upper storey may refuse to allow the owner of the lower storey to occupy or to make use of his storey until he has repaid the amount of his debt. He may also obtain authority to let or to occupy the lower storey in repayment of the amount due to him.

ARTICLE 865 (E.C. 861) HEIGHTENING OF BUILDING

The owner of the upper storey shall not heighten the building in such a way as to injure the lower storey.

Syndicates of Owners of a Single Building

ARTICLE 866 (E.C. 862) SYNDICATES

1. When a building, divided into storeys or apartments, belongs to several owners, such owners may form a syndicate amongst themselves.

2. A syndicate may also have for its object the construction or the acquisition of buildings with a view to allocating the ownership of parts of such buildings to members of the syndicate.

ARTICLE 867 (E.C. 863) RULES FOR ENJOYMENT OF BUILDING

A syndicate may, with the consent of all its members, establish rules with a view to assuring a better enjoyment and a better management of the building held in common.

ARTICLE 868 (E.C. 864) ABSENCE OF RULES FOR ENJOYMENT OF BUILDING

In the absence of such rules or if such rules do not contain provisions in respect of certain points, the right to manage the parts held in common belongs to the syndicate, whose decisions will be, in this respect, binding, provided that all the interested parties have been summoned to a meeting by registered letter and that the decisions have been taken by a majority of the owners, calculated on the basis of the value of their shares.

ARTICLE 869 (E.C. 865) INSURANCE AND NEW WORKS

The syndicate may, with the consent of the majority prescribed in the preceding Article, take out collective insurances against risks to the building or to the co-owners jointly and may authorize, at the expense of the owners who so demand, all works or installations which increase the value of all or part of the building, upon the conditions and subject to such compensation and other obligations as may be laid down by the syndicate, in the interests of the co-owners.

ARTICLE 870 (E.C. 866) APPOINTMENT OF MANAGER

1. A manager shall be appointed by the majority of the owners, as provided for in Article 868 (95) to carry out the decisions of the syndicate. If the required majority is not obtained, a manager of the syndicate will be appointed, at the request of one of the co-owners and upon the other owners being called to give their views, by the competent Judicial Authority (96). The manager shall, if need be, upon his own initiative, take all necessary measures for the preservation, protection and maintenance of all parts held in common. He shall be entitled to call on any party concerned to perform these obligations. These provisions shall apply in the absence of any provisions to the contrary in the rules of the syndicate

(95) Article 864 in E.C.

(96) In E.C.: "by the President of the Court of First Instance within whose jurisdiction the building is situated."

2. The manager of the syndicate shall represent the syndicate before the Courts, even against the owners if need be.

ARTICLE 871 (E.C. 867) REMUNERATION AND DISCHARGE OF MANAGER

1. The remuneration of the manager of the syndicate will be fixed in the decision or order appointing him.

2. The manager of the syndicate may be discharged by a decision taken by the majority of the co-owners, as laid down in Article 868, or by an order of the President of the Court of First Instance within whose jurisdiction the building is situate, after the co-owners have been summoned to be heard on the question of his discharge.

ARTICLE 872 (E.C. 868) DETERIORATION OF BUILDING

1. If the building is destroyed by fire or otherwise, the co-owners are, subject to any agreement to the contrary, bound to conform to the decision of the syndicate as to its reconstruction taken by the majority, as provided in Article 868.

2. If the syndicate decides to reconstruct the building, any amount due as compensation on account of the destruction of the building shall, without prejudice to the rights of the registered creditors, be set aside for the costs of reconstruction.

ARTICLE 873 (E.C. 869) LOANS AND SECURITY THEREFOR

1. Any loan made by the syndicate to one of the co-owners, in order to assist him to carry out his obligations, will be secured by a privileged charge on his divided part as well as on his undivided share in the parts of the building held in common.

2. The rank of this privilege will date from its registration.

Section II

Acquisition of Ownership

Acquisition by Appropriation

The Appropriation of Movables without an Owner

ARTICLE 874 (E.C. 870) ACQUISITION BY TAKING POSSESSION

Whoever takes possession of a movable which has no owner, with the intention of its appropriation, acquires the ownership thereof.

ARTICLE 875 (E.C. 871) MOVABLE HAVING NO OWNERS

1. A movable is deemed to have no owner when its owner abandons possession of it with the intention of renouncing his ownership thereto.

2. Animals, other than domestic animals, are deemed to have no owner as long as they are at liberty. If one of such animals, after losing its liberty, regains its freedom, it becomes without an owner if the owner does not seek for it immediately or ceases to seek for it. An animal that has become tame and is accustomed to return to the same place becomes again without an owner if it loses this habit.

ARTICLE 876 (E.C. 872 but para. 3 is added in Libyan Code) TREASURE

1. Buried or hidden treasure to which no one can establish ownership belongs to the owner or the bare owner of the property on which it is discovered.

2. Treasure discovered on waqf property belongs to the founder of the waqf or his heirs.

3. If a person by mere chance finds treasure among property belonging to another it shall be divided equally between him and the owners.

ARTICLE 877 (E.C. 873) HUNTING AND THINGS FOUND

Rights of fishing and hunting and rights to things found and to antiquities, are governed by special regulations.

The Appropriation of Immovables which have no Owner

ARTICLE 878 (Paras. 1 and 2 only of E.C. 874) UNCULTIVATED LAND

1. Uncultivated land which has no owner is the property of the State.

2. The appropriation or the possession of uncultivated land can only be effected with the authority of the State in accordance with the regulations.

Acquisition by Inheritance and Winding Up of an Estate

ARTICLE 879 (E.C. 875) APPLICATION OF ISLAMIC LAW AND SPECIAL LAWS

1. The establishment of the heirs, of their hereditary shares and of the devolution of the property of the estate on them is governed by Islamic Law and by the laws with regard to inheritance and estates.

2. The following provisions apply to the winding up of an estate.

Appointment of Administrator (97)

ARTICLE 880 (E.C. 876) APPOINTMENT OF ADMINISTRATOR

In the absence of the appointment of a testamentary executor by the deceased, the Court may, at the request of an interested party, if it considers it necessary to do so, appoint an administrator of the estate a person chosen unanimously by the heirs. In the absence of unanimity, the Judge will, after having heard the heirs, choose an administrator, if possible from amongst the heirs.

(97) The word used in Arabic corresponds to "liquidator".

ARTICLE 881 (E.C. 877) RENUNCIATION BY AND REMOVAL OF ADMINISTRATOR

1. A person appointed administrator may decline to act or may, after having acted as administrator, renounce the appointment in accordance with the provisions of the mandate.

2. The Judge may also, for adequate reasons, either at the request of any of the interested parties or at the request of the Parquet, or on his own initiative, discharge an administrator and replace him by another.

ARTICLE 882 (E.C. 878) CONFIRMATION BY JUDGE OF APPOINTMENT OF EXECUTOR

1. The appointment of a testamentary executor by the deceased must be confirmed by the Judge.

2. The rules applicable to an administrator of an estate apply equally to a testamentary executor.

ARTICLE 883 (E.C.479) RECORD OF COURT ORDERS AS TO APPOINTMENT OF ADMINISTRATORS

1. The Clerk of the Court must enter, day by day, the Court orders as to the appointment of administrators and the confirmation of testamentary executors, in a public register, recording the names of the deceased person in accordance with the form prescribed for aphabetical indexes. He must enter in the margin of the register all orders of revocation and all renunciations.

2. The entry of the order as to the appointment of an administrator will, as regards third parties dealing with the heirs in connection with immovable property belonging to the estate, have the same effect as the entry provided for in Article 918 (98).

(98) Art.914 in E.C.

ARTICLE 884 (E.C.880) TAKING POSSESSION OF ESTATE BY ADMINISTRATOR AND COSTS OF WINDING UP

1. An administrator shall, upon his appointment, take possession of the property of the estate and proceed with the winding up of the estate under the control of the Court. He may apply to the Court for remuneration commensurate with the duties performed by him.

2. The estate shall bear the costs of the winding up. These costs will have a privilege in the same preferential rank as legal expenses.

ARTICLE 885 (E.C. 881) URGENT NECESSARY MEASURES

The Court must, at the request of any interested party or of the Parquet, or on its own initiative, take, if need be, urgent necessary measures for the preservation of the property of the estate. The Court may in particular order that the property be placed under seal and that cash, securities and articles of value be placed in deposit.

ARTICLE 886 (E.C. 882) FUNERAL EXPENSES AND ALLOWANCES TO HEIRS

1. The administrator must immediately pay, out of the assets of the estate, burial and funeral expenses in accordance with the social standing of the deceased. He must also obtain an order from the Court authorizing him to make, pending the final winding up, an adequate alimentary allowance to such heirs as were supported by the deceased and to deduct such payments from the share in the estate of each heir to whom such alimentary allowance is made.

2. Any dispute arising as regards such an allowance shall be settled by the competent Court.

INVENTORY OF THE ESTATE

ARTICLE 887 (E.C. 883) RIGHTS OF CREDITORS

1. As from the date of the entry of the order appointing an administrator, the creditors of an estate can only take proceedings or continue proceedings already commenced in connection with the estate against the administrator.

2. Any distribution (99) against the deceased before his death (100), in which the order of allotment has not become final, must, at the request of any interested party, be suspended until all the debts of the estate have been settled.

(99) A distribution is the division amongst the creditors, made by an order of the Court, of a sum of money deposited in or held by the Court for the account of a debtor.

(100) The words "before his death" are not in the Arabic text but have been inserted in this translation for the sake of clarity.

ARTICLE 888 (E.C.884) DISPOSAL OF ASSETS BY HEIR

No heir may dispose of estate assets, recover estate debts, or set off a personal debt against a debt of the state until an inheritance certificate, provided for in Article 905 (101), has been delivered to him.

(101) Art.901 in E.C.

ARTICLE 889 (E.C. 885) ADMINISTRATION OF ESTATE

1. An administrator is bound, during the winding up, to take the necessary measures to preserve and administer the property of the estate. He must also represent the estate before the Courts and proceed with the recovery of debts due to the estate.

2. An administrator, is, even if he is not remunerated, responsible to the same extent as a paid mandatary. The Judge may call on him to render an account of his administration at periodical intervals.

ARTICLE 890 (E.C. 886. "Court" in para. 2 hereof is "Summary Court" in E.C. There are other slight variations.)

PROOF OF DEBTS BY CREDITORS AND DEBTORS

1. An administrator must publish a notice calling on the creditors and debtors of the estate to submit particulars of their claims and of their debts before the expiry of three months from the last publication of the notice.

2. This notice must be posted on the main door of the Municipality of the District in the town or village in which the estate property is situated or on the main door of the police station in the town where the property is situated and on the notice-board of the Court within the jurisdiction of which the last domicile of the deceased was situated and in a daily newspaper with a wide circulation.

ARTICLE 891 (E.C. 887) STATEMENT OF ASSETS AND LIABILITIES

1. An administrator must, within four months from the date of his appointment, file with the Office of the Clerks of the Court a statement of the assets and liabilities of the estate with an estimate of their value. He must also, within the same time, inform every interested party by registered letter of the filing of the statement.

2. An administrator may apply to the Judge for an extension of time, if this extension is justified by circumstances.

Inventory of the Estate

ARTICLE 892 (E.C. 888) INVENTORY

1. An administrator may employ, for the preparation of the inventory and for the estimation of the value of the property of the estate, an expert or a person with the necessary special experience.

2. An administrator must record claims and debts disclosed by the papers of the deceased, shown in public registers or coming to his knowledge in any other way. The heirs must also advise the administrator of all debts and claims of the estate known to them.

ARTICLE 893 (E.C. 889) FRAUDULENT APPROPRIATION OF ASSETS

Any person, including an heir, who fraudulently appropriates a part of the assets of the estate, is liable to the penalties of misappropriation.

ARTICLE 894 (E.C. 890) OBJECTIONS TO INVENTORY

1. Any dispute as to the accuracy of the inventory, particularly as regards the omission of assets, claims or debts of the estate, or as to the entry in the records, should be submitted to the Court by petition at the request of any interested party within the thirty days following the notice of the filing of the inventory.

2. The Court will investigate the dispute. If the Court considers the claim to be a serious one, it will admit the claim by an order which is subject to recourse in accordance with the provisions of the Code of Civil and Commercial Procedure.

3. If the dispute has not already been submitted to a Court of Justice, the Court will fix a delay within which the interested party should submit the claim to the competent Court, which Court will deal with the matter as one of urgency.

Discharge of the Debts of the Estate

ARTICLE 895 (E.C. 891) PAYMENT OF DEBTS

Upon the expiration of the delay fixed for the submission of disputes arising on the inventory, the administrator will proceed, upon the authority of the Court, with the payment of those debts of the estate which are uncontested. Debts which are contested will be settled after the final decision of the Court on the litigation.

ARTICLE 896 (E.C. 892) INSOLVENCY OF ESTATE

In the event of the estate being insolvent or of the possibility of its being insolvent, the administrator must suspend the discharge of any debt, even uncontested, pending final decisions in respect of all disputes arising as to debts of the estate.

ARTICLE 897 (E.C. 893) DISPOSAL OF ESTATE

1. The administrator will discharge the debts of the estate with funds derived from claims recovered, cash in hand, proceeds of the sale of securities at market prices, proceeds of the sale of moveables and, if the funds so obtained are insufficient, with the proceeds of the sale of immovable property of the estate.

2. The sale of movable and immovable property of an estate will be made by public auction in the manner and subject to the delays laid down for forced sales, unless all the heirs agree the sale shall be carried out by negotiation or in any other manner. If the estate is insolvent the approval of all the creditors is also necessary. The heirs are always entitled to take part in the auction.

ARTICLE 898 (E.C. 894) DEMAND FOR PAYMENT OF DEBT BEFORE DUE

The Court may, at the request of all the heirs, pronounce the immediate exigibility of a debt not yet due for payment, and fix the amount payable to the creditor in accordance with the provisions of Article 546 (101).

(101) Art. 544 in E.C.

ARTICLE 899 (E.C. 895) DISTRIBUTION OF ESTATE BY COURT

1. If the heirs do not unanimously agree to demand the immediate exigibility of a debt not yet due for payment the Court will proceed with the distribution of the debts not yet due for payment and of the assets of the estate, so that each heir takes from such debts and assets a portion corresponding to the net value of his share in the inheritance.

2. The Court will give each creditor of the estate an adequate guarantee on a movable or immovable property, reserving, however, to any creditor who had a special security that same security. When this is not possible, even by additional security given by the heirs on their own property, or by any other arrangement, the Court will charge all the estate assets to provide such security.

3. In all these cases, if security has been given on an immovable property and has not already been published, such security must be published in accordance with the provisions laid down as to the publication of judgment charges on real property.

ARTICLE 900 (E.C. 896) ADVANCE PAYMENT OF DEBTS AFTER DISTRIBUTION

Any heir may, after distribution of the debts not yet due for payment, pay the amount allocated to him before the due date in conformity with Article 898 (102).

(102) Art. 894 in E.C.

ARTICLE 901 (E.C. 897) RIGHTS OF ACTION OF CREDITORS

Creditors of the estate, whose debts have not been paid because they were not shown in the inventory and were not secured by a charge on the property of the estate, have no remedy against third parties who have acquired, in good faith, a real right on this property, but have a right of action against the heirs to the extent to which the heirs have benefited.

ARTICLE 902 (E.C. 898) PAYMENT OF LEGACIES AND OTHER CHARGES

An administrator shall, after discharge of the debts of the estate, proceed with the payment of legacies and other charges.

Delivery and Division of Property of the Estate

ARTICLE 903 (E.C. 899) DEVOLUTION OF ESTATE

The residue of the property of the estate, after settlement of the liabilities, devolves on the heirs in proportion to their shares in the inheritance.

ARTICLE 904 (E.C. 900) DELIVERY TO HEIRS OF ESTATE DEVOLVING ON THEM

1. An administrator shall deliver to the heirs the property of the estate devolving on them.

2. The heirs may, upon the expiration of the time fixed for the submission of disputes arising on the inventory, demand that all or part of the things or cash which are not required for the winding up of the estate be provisionally delivered to them, with or without security.

ARTICLE 905 (E.C. 901) CERTIFICATE OF RIGHTS IN INHERITANCE

The Court will give to each heir who produces a legal document as to the inheritance, a certificate establishing his rights in the inheritance, the extent of his share therein and the estate property devolving on him.

ARTICLE 906 (E.C. 902) DELIVERY OF SHARES IN INHERITANCE TO HEIRS

An heir may call upon the administrator to deliver to him his share in the estate as a divided part, unless such an heir is obliged to remain an owner in common by reason of an agreement or a provision of the law.

ARTICLE 907 (E.C. 903) PROCEDURE FOR DIVISION

1. When a demand for division should be admitted, the administrator will proceed with the division amicably, but this division will only become final upon the unanimous approval of the heirs.

2. If the heirs do not unanimously approve the division, the administrator must bring an action for the division in accordance with the provisions of the law; the costs of this action will be charged to the estate and deducted from the hereditary shares of the co-sharers.

ARTICLE 908 (E.C. 904) SPECIAL RULES AS TO DIVISION

The rules laid down for the partition of property held in common, especially those as regards warranty against disturbance and eviction, lesion and the referential rights of a partitioner, shall apply to the division of estates, as well as the following provisions.

ARTICLE 909 (E.C. 905) FAMILY PAPERS

In the absence of an agreement between the heirs as to the division of family papers or articles having a sentimental value for the heirs owing to their relationship to the deceased, the Court shall order either the sale of these articles or their allocation to one of the heirs, with or without deduction of their value from his share in the estate, taking into account both custom and the personal circumstances of the heirs.

ARTICLE 910 (E.C. 906) AGRICULTURAL, INDUSTRIAL AND COMMERCIAL ENTERPRISES

If there is, amongst the property of an estate, an agricultural, industrial or commercial enterprise constituting a distinct economic unity, it must be allotted as a whole to such one of the heirs who applies for it if he is the most capable of the heirs to carry on the enterprise. The price of such an enterprise will be fixed in accordance with its value and will be deducted from his share in the estate. If the heirs are all equally capable of carrying on the enterprise, it shall be allocated to the heir who offers the highest price, provided that this price shall not be less than the price for similar enterprises.

ARTICLE 911 (E.C. 907) ALLOCATION OF DEBT OF ESTATE

If, at the time of division, a debt due to the estate is allocated to one of the heirs, the other heirs are not, in the absence of an agreement to the contrary, guarantors of the debtor, if he becomes insolvent subsequent to the division.

ARTICLE 912 (E.C. 908) WILL DIVIDING PROPERTY OF ESTATE

A will dividing the property of the estate between the heirs of the testator and setting out the share of each heir or of certain of the heirs is valid. If the value of the share so given to one of them exceeds his hereditary share, the excess is deemed to be a legacy by will.

ARTICLE 913 (E.C. 909) DISPOSITION "MORTIS CAUSA"

A division made by disposition "mortis causa" may always be revoked. It becomes irrevocable on the death of the testator.

ARTICLE 914 (E.C. 910) PROPERTY NOT INCLUDED IN DISPOSITION "MORTIS CAUSA"

If such a division does not include all the property of the deceased at the date of his death, that property which has not been included in the division devolves in common on the heirs in accordance with the rules as to inheritance.

ARTICLE 915 (E.C. 911) HEIR PREDECEASING DECEASED

If one or more of the contingent heirs included in the division predecease the deceased, the divided part allotted to him or them devolves in common on the other heirs in accordance with the rules as to inheritance.

ARTICLE 916 (E.C. 912) PROVISIONS AS TO DISPOSITION "MORTIS CAUSA"

The general rules as to division, with the exception of those relating to lesion, apply to division made by disposition "mortis causa".

ARTICLE 917 (E.C.913) DIVISION OF DEBTS OF ESTATE

If the debts of the estate are not included in the division, or if these debts are included and the creditors do not agree to the division, any heir may, if these debts are not settled in agreement with the creditors, call for a division of the estate in accordance with Article 899 (103). In this case, account must be taken, as far as possible, of the division made by the deceased and the considerations which guided him as regards such division.

(103) Art. 895 in E.C.

Rules Applicable to Estates that have not been Wound Up

ARTICLE 918 (E.C. 914) RIGHTS OF CREDITORS

When an estate has not been wound up in accordance with the preceding provisions, the unsecured creditors of the estate may take action, in respect of their claims or of their legaices, on the immovable property of the estate which has been alienated or which has been charged with real rights to the benefit of third parties, provided that they have recorded such claims in accordance with the provisions of the law.

Acquisition by Will

ARTICLE 919 (E.C. 915) PROVISIONS AS TO WILLS

Wills are governed by the rules of Islamic Law and by laws on wills.

ARTICLE 920 (E.C. 916) DISPOSITIONS DURING ILLNESS PRECEDING DEATH

1. Every legal disposition made by a person during an illness immediately preceding his death, with the object of making a gift, is deemed to be a testamentary disposition and must be governed by the rules applicable to wills, no matter what description has been given to such an act.

2. The heirs of the person who has made such a legal disposition are the persons on whom falls the onus of proving that it was made by the deceased during an illness immediately preceding his death. This proof may be tendered in any way and the date of the legal instrument establishing the disposition cannot be invoked against the heirs, unless it is an established date.

3. If the heirs establish that the legal disposition was made by the deceased during an illness immediately preceding his death, the act is deemed to be a gift (i.e. a testamentory disposition). unless the beneficiary proves that the contrary was the case. The above provisions are subject to any special provisions to the contrary.

ARTICLE 921 (E.C. 917) DISPOSITION IN FAVOUR OF ONE HEIR

In the absence of any evidence to the contrary, when a person disposes of a property in favour of one of the heirs, reserving at the same time in some manner the possession and the enjoyment of the property so disposed of during his lifetime, the disposition is deemed to be a testamentary disposition and must be governed by the rules applicable to wills.

Acquisition by Accession

The Right of Accession in Respect of Immovable Property

ARTICLE 922 (E.C. 918) OWNERSHIP OF ALLUVIUM

Alluvium formed gradually and imperceptibly by the river belongs to the riparian owners.

ARTICLE 923 (E.C. 919) LAND UNCOVERED BY THE SEA

1. Land uncovered by the sea belongs to the State.

2. No one may encroach upon the seashore except for the purpose of restoring the boundaries of his property which has been covered by the sea.

ARTICLE 924 (E.C. 920) LANDS COVERED OR UNCOVERED BY STILL WATERS

Owners of lands adjoining still waters, such as lakes and ponds, do not acquire ownership over land uncovered by the retreat of these waters, nor do they lose their ownership over land which such waters overflow.

ARTICLE 925 (E.C. 921) LANDS DISPLACED OR UNCOVERED BY RIVER

The ownership of land displaced or uncovered by the river and of islands formed in its channel is regulated by special laws.

ARTICLE 926 (E.C. 922) PLANTATIONS AND BUILDINGS

1. All buildings, plantations, and other works existing above or below ground are deemed to have been carried out by the owner of the land at his own expense and belong to him.

2. It may be proved, however, that such works were made by a third party at his own expense, as it may also be proved that the owner of the land has transferred the ownership of works already existing or the right to erect and own such works to a third party.

ARTICLE 927 (E.C. 923) CONSTRUCTION CARRIED OUT WITH MATERIALS OF ANOTHER

1. Constructions, plantations, and other works carried out with materials belonging to another, become the exclusive property of the owner of the land when the removal of these materials is not possible without seriously damaging the works, or even when it is possible to do so but proceedings to recover the property are not commenced within a year from the date on which the owner of the materials knew of their incorporation in the works.

2. When the owner of the land acquires the property of the materials, he must pay their value together with an indemnity, if indemnity is due. When, however, the owner of the materials recovers the materials, their removal must be effected at the cost of the owner of the land.

ARTICLE 928 (E.C. 924) CONSTRUCTION WITHOUT CONSENT OF OWNER OF LAND

1. When a third party carries out works with his own materials on land which he knows is not his own property, without the consent of the owner of the land, the owner of the land may, within a year from the day on which he learns of the execution of the works, demand either their removal at the cost of the third party who erected them, together with an indemnity, if indemnity is due, or their retention against payment of their breakup value or of a sum equal to the increased value they have given to the land.

2. A third party who carries out the works may claim the right to remove them if he does not cause any damage to the land in so doing, unless the owner of the land chooses to keep the works in accordance with the provisions of the preceding Article.

ARTICLE 929 (E.C. 925) CONSTRUCTION ON LAND OF ANOTHER IN GOOD FAITH

1. If the third party who carried out the works mentioned in the preceding Article honestly believed that he was entitled to do so, the owner of the land has not the right to demand their removal, but he may, at his option, and provided the third party does not claim their removal, pay the third party either the value of the materials and the cost of the work or a sum equal to the increased value that the works have given to the land.

2. If, however, the works are so extensive that the payment of the amount due in respect thereof is onerous for the owner of the land, he may claim the conveyance of the ownership of the land to the third party against payment of adequate compensation.

ARTICLE 930 (E.C. 926) CONSTRUCTION WITH CONSENT OF OWNER

If a third party carries out works with his own materials, with the permission of the owner of the land, the owner of the land cannot, in the absence of an agreement with regard to these works, demand their removal. The owner of the land must pay to the third party, if the third party does not himself ask for their removal, one of the two amounts laid down in the first paragraph of the preceding Article.

ARTICLE 931 (E.C. 927) COMPENSATION

The provisions of Article 986 (104) apply as regards payment of compensation referred to in the three preceding Articles.

(104) Art. 962 in E.C.

ARTICLE 932 (E.C. 928) ENCROACHMENT ON ADJOINING LAND

If during the construction of a building on his own land, an owner encroaches in good faith on part of an adjoining land, the Court may, within its discretion, compel the owner of the adjoining land to transfer to his neighbour the ownership of that part which is occupied by the building, against payment of adequate compensation.

ARTICLE 933 (E.C. 929) LIGHT CONSTRUCTION ON LAND OF ANOTHER

Light constructions, such as sheds, shops, and shelters, erected on the land of another, which are not intended to be maintained permanently, shall be the property of the person who erects them.

ARTICLE 934 (E.C. 930) CONSTRUCTION BY THIRD PARTY WITH MATERIALS OF ANOTHER

If a third party carries out works with materials belonging to another party, the owner of the materials cannot claim their restitution but he has a claim for compensation against the third party, and also against the owner of the land up to the amount remaining due by him in respect of the value of the works.

The Right of Accession in Respect ot Movable Property

ARTICLE 935 (E.C. 931) APPLICATION OF RULES OF EQUITY

When two movables belonging to two different owners become mingled in such a way that they cannot be separated without deterioration, the Court, in the absence of any agreement between the two owners, shall decide the matter in accordance with the rules of equity, having regard to the damage already done, the circumstances and the good faith of each of the two parties.

Acquisition by Contract

ARTICLE 936 (E.C. 932) TRANSFER OF OWNERSHIP BY CONTRACT

The ownership of movables and immovables and other real rights are transferred by contract, when the contract refers to an object belonging to the person disposing of it, in accordance with Article 207 (105) and subject also to the following provisions.

(105) Art. 204 in E.C.

ARTICLE 937 (E.C. 933) TRANSFER OF MOVABLE ON IDENTIFICATION

The ownership of a movable which is described only as regards its species is transferred only upon its identification in accordance with Article 208 (106).

(106) Art. 205 in E.C.

ARTICLE 938 (E.C. 934) TRANSFER OF RIGHTS SUBJECT TO PUBLICATION

1. Ownership and other real rights over immovable property are not transferred either between parties or as regards third parties unless the rules laid down in the law resulting the publication of real rights are observed.

2. The law regulating the publication of real rights referred to above shall indicate the acts, judgments and instruments which should be published, whether they have the effect of transferring the ownership or not, and shall determine the rules as regards such publication.

Acquisition by Pre-Emption

Conditions for the Exercise of Right of Pre-Emption

ARTICLE 939 (E.C. 935) DEFINITION

Pre-emption is the opportunity that a person has to substitute himself in a sale of immovable property in the place of the purchaser, in the cases and subject to the conditions laid down in the following Articles.

ARTICLE 940 (Part only of E.C. 936) TO WHOM RIGHT OF PRE-EMPTION BELONGS

The right of pre-emption belongs :
(a) To the bare owner, in the case of a sale of all or part of the usufruct attached to a bare property;
(b) To the co-owner in common, in case of a sale to a third party of a part of the property held in common.
(c) To the usufructuary, in case of a sale of all or part of the bare property which produces his usufruct.

ARTICLE 941 (E.C. 937 but para. 3 differs) PLURALITY OF PRE-EMPTORS

1. When several persons pre-empt, the right of pre-emption will be exercised in the order set out in the preceding Article.

2. If several persons of the same degree exercise the rights of pre-emption, the right of pre-emption will belong to each one of them in proportion to his share.

3. If a purchaser is, in accordance with the provisions laid down in the preceding Article, entitled to exercise the right of pre-emption, he will not be preferred to other pre-emptors of his degree.

ARTICLE 942 (E.C. 938) SALE OF PROPERTY SUBJECT TO PRE-EMPTION

If a person acquires a property which may be subject to pre-emption and sells it prior to any notification of any intention to pre-empt or prior to the transcription of such notification in accordance with Article 946 (107), pre-emption can only be exercised against the second purchaser and subject to the conditions upon which he has purchased the property.

(107) Art. 942 in E.C.

ARTICLE 943 (E.C. 939 but last para. has an addition not in E.C.)
WHEN PRE-EMPTION MAY NOT BE EXERCISED

1. Pre-emption cannot be exercised :-
(a) If the sale is made by public auction in accordance with the procedure prescribed by law;
(b) If the sale is made between ascendants and descendants, between spouses or between relatives to the fourth degree, or between relatives by marriage to the second degree;
(c) If the property sold is destined for religious purposes, or to be annexed to property already used for such purposes.

2. A waqf cannot exercise the right of pre-emption, unless the person creating the waqf has expressly reserved the power to do so in the civil deed of the waqf.

Procedure for Pre-Emption

ARTICLE 944 (E.C. 940) NOTIFICATION OF DESIRE TO EXERCISE RIGHT

Whoever desires to exercise the right of pre-emption must, on pain of forfeiture of his right, notify both the vendor and the purchaser of his intention within a period of fifteen days from the date of formal summons served on him either by the vendor or by the purchaser. This period is increased, if necessary, by the time allowance for distance.

ARTICLE 945 (E.C. 941) PARTICULARS TO BE CONTAINED IN FORMAL SUMMONS

The formal summons provided for in the preceding Article must, on pain of nullity, contain the following particulars:

(a) An adequate description of the property subject to pre-emption;

(b) The amount of the price, the costs, the conditions of sale, and the first names, surnames, professions and domiciles of the vendor and the purchaser.

ARTICLE 946 (E.C. 942) CONDITIONS FOR NOTIFICATION AND DEPOSIT OF SALE PRICE

1. Notification of intention to exercise the right of pre-emption must, on pain of nullity, be made through the Court. It is not valid as against third parties unless it is transcribed.

2. The actual sale price must, within thirty days at the most from the date of this notification, be deposited in full at the treasury of the Court of the District in which the property is situated, and in any event before the introduction of the action in pre-emption. If this deposit is not made within the prescribed time and manner, the right of pre-emption shall be forfeited.

ARTICLE 947 (E.C. 943) ACTION IN PRE-EMPTION

An action on pre-emption must, under pain of forfeiture be introduced against the vendor and the purchaser before the Court of the District in which the property is situated, and enrolled on the Court list within the thirty days from the date of the notification provided for in the preceding Article. The case will be disposed of as a matter of urgency.

ARTICLE 948 (E.C. 944) JUDGMENT ESTABLISHING RIGHT OF PRE-EMPTION

Without prejudice to the rules with regard to transcription, the judgment which finally establishes the right to pre-emption will constitute the title of ownership of the pre-emptor.

Effects of Pre-Emption

ARTICLE 949 (E.C. 945) SUBSTITUTION OF PRE-EMPTOR FOR PURCHASER

1. The pre-emptor is, vis-a-vis the vendor, substituted for the purchaser in all his rights and obligations.

2. The pre-emptor is not, however, entitled to benefit from the delay granted to the purchaser for payment of the price unless he obtains the consent of the vendor.

3. If, after pre-emption, the property is claimed by a third party, the pre-emptor will only have a right of action against the vendor.

ARTICLE 950 (E.C. 946) CONSTRUCTION BY PURCHASER BEFORE OR AFTER NOTIFICATION OF PRE-EMPTION

1. If, before the notification of pre-emption, the purchaser has built or planted on the property pre-empted, the pre-emptor is bound, at the option of the purchaser, to pay to the purchaser either the amount spent by him or the amount of the increase in value of the property as a result of such constructions or plantations.

2. When however, such constructions or plantations have been made after the notification of pre-emption, the pre-emptor may claim their removal. If he prefers to retain them, he is not bound to pay the value of the building materials and the labour or the planting expenses.

ARTICLE 951 (E.C. 947 with slight variation) EFFECT OF MORTGAGES

Mortgages whether voluntary, judicial, or legal, registered against the purchaser, and any sale made by him and any real right granted by or registered against him after the date of the transcription of the notification of pre-emption, are not valid as against the pre-emptor. Registered creditors, however, will retain their rights of preference on that part of the price of the property which reverts to the purchaser.

Forfeiture of Right of Pre-Emption

ARTICLE 952 (E.C. 948) FORFEITURE OF RIGHT

The right of pre-emption is forfeited in the following cases:

(a) If the pre-emptor renounces his right, even before the sale;

(b) If one year has elapsed since the date of the registration of the deed of sale, whether the pre-emptor be present or absent (108);

(c) In all other cases prescribed by law.

(108) The words "whether the pre-emptor be present or absent" are not contained in E.C. The period mentioned is four months in E.C.

Possession

Acquisition, Transfer and Loss of Possession

ARTICLE 953 (E.C. 949) WHEN POSSESSION DOES NOT RESULT

1. Possession does not result from acts that are done by permission or merely tolerated.

2. Possession obtained by acts of violence, secretly or in dubious manner has effect, as regards the person against whom the violence, secrecy or dubious means were exercised, only from the time that such unlawful means have ceased.

ARTICLE 954 (E.C. 950) POSSESSION OF PERSON LACKING DISCRETION

A person lacking discretion may acquire possession by the intervention of his legal representative.

ARTICLE 955 (E.C. 951) POSSESSION BY INTERMEDIARY

1. Possession may be exercised by an intermediary, provided that he exercises it in the name of the possessor and that his relationship to the possessor is such that he is obligated to obey his instructions as regards the possession.

2. In case of doubt a person who is actually in possession is presumed to be in possession on his own behalf. If he continues a former possession, the continuation of such possession is presumed to be on behalf of the person who commenced the possession.

ARTICLE 956 (E.C. 952) TRANSMISSION OF POSSESSION

Possession is transmitted by a possessor to another person by mutual agreement, without actual delivery of the thing which is the object of possession being made, provided the person to whom the possession has been transmitted is able to assume control of the right over the thing forming the object of possession.

ARTICLE 957 (E.C. 953) TRANSMISSION OF POSSESSION WITHOUT ACTUAL DELIVERY

Possession may be transmitted without actual delivery if the possessor continues the possession on behalf of his successor in title or if the successor in title continues the possession for his own account.

ARTICLE 958 (E.C. 954) DELIVERY OF DOCUMENTS

1. The handing over of documents issued in respect of goods entrusted to a carrier or deposited in store is equivalent to the handing over of the goods themselves.

2. If, however, the documents are handed over to one person and the goods to another, both being of good faith, the person who receives the goods has the preference.

ARTICLE 959 (E.C. 955) SUCCESSIVE POSSESSION

1. Possession is transmitted with all its features to a universal successor in title. When the original possessor was of bad faith, his successor in title may, however, if he establishes his good faith, avail himself thereof.

2. A successor in title holding under a special title may add to his possession that of the original possessor for the legal effect of possession (109).

(109) i.e., to make up the time required for prescription to have run.

ARTICLE 960 (E.C. 956) CESSATION OF POSSESSION

Possession ceases when the possessor abandons his actual control over the right or when he loses it in any other way.

ARTICLE 961 (E.C. 957) EFFECT OF TEMPORARY HINDRANCE

1. Possession does not cease if a temporary obstacle prevents the possessor from exercising his actual control over the right.

2. Possession ceases, however, if this obstacle continues for a whole year and is the result of a new possession exercised against the wish or without the knowledge of the possessor. The period of one year runs from the moment from which the new possession commences, if it takes place openly, or from the day on which the former possessor knew of it, if it commences secretly.

Protection of Possession (The Three Possessory Actions)

ARTICLE 962 (E.C. 958) CLAIM FOR REINSTATEMENT IN POSSESSION

1. A person who is in possession of an immovable and who loses possession thereof may, during the year which follows his loss of possession, claim to be reinstated in possession. If the loss of possession was secret, the delay of one year commences from the day on which the loss of possession is discovered.

2. A person who exercises possession on behalf of another person may also claim to be reinstated in possession.

ARTICLE 963 (E.C. 959) DISPUTED POSSESSION

1. A person losing possession after having been in possession for less than a year can only claim to be reinstated if the person dispossessing him has not a better possession than his own. The possession is better if founded on a legal title. If neither possessor has a title or both possessors have titles of equal value, the better possession is that which commenced first.

2. If the loss of possession takes place by violence, the possessor may always claim restitution within a year following the loss of possession.

ARTICLE 964 (E.C. 960) RECOVERY OF POSSESSION FROM ANOTHER

A person who has been dispossessed may take proceedings, within the time allowed by law, for recovery of possession against the person who has possession of the property of which he was dispossessed, even if such person acted in good faith.

ARTICLE 965 (E.C. 961) CLAIMS FOR DISCONTINUANCE OF DISTURBANCE IN POSSESSION

A person who remains in possession of an immovable for a whole year may, if he is disturbed in his possession, take proceedings during the year which follows the disturbance for the discontinuance of the disturbance.

ARTICLE 966 (E.C. 962) STAY OF WORKS THREATENING POSSESSION OF IMMOVABLE

1. A person who remains in possession of an immovable for a whole year may, if he has good grounds to fear disturbance as a result of new works which threaten his possession, apply to the Judge to order the suspension of such works, provided that they have not been finished and that a year has not elapsed since the commencement of the works which may cause him damage.

2. The Judge may either stop or authorize the continuance of the works. In both cases he may order the provision of an adequate guarantee: in the case of a judgment ordering the suspension of the works, to cover compensation for damage caused by the suspension if a final decision shows that the claim for discontinuance of the works was without foundation; and in the case of judgment ordering the continuance of the works, to cover the cost of their total or partial demolition as compensation for the damage suffered by the possessor if he obtains a final judgment in his favour.

ARTICLE 967 (E.C. 963) ACTUAL POSSESSION

When several persons claim possession of the same right, the person who has actual possession is presumed to be provisionally the possessor unless it is established that he acquired possession in a wrongful manner.

ARTICLE 968 (E.C. 964) PRESUMPTION AS TO RIGHTFUL OWNER

The possessor of a right is presumed, until the contrary is proved, to be the rightful owner.

ARTICLE 969 (E C. 965) POSSESSION IN GOOD FAITH

1. The possessor of a right who is unaware that he infringes the right of another is presumed to be of good faith, unless his ignorance was the result of a serious mistake.

2. If the possessor is a juristic person, it is the good or bad faith of its representative that will be taken into account.

3. Good faith is always presumed in the absence of proof to the contrary.

ARTICLE 970 (E.C. 966) CESSATION OF GOOD FAITH

1. The good faith of a possessor ceases only from such time as he becomes aware that his possession infringes the rights of another.

2. Good faith ceases as soon as the defects of the possession have been notified to the possessor in the writ by which legal proceedings are commenced. A person who has usurped the possession of another by violence is deemed to have acted in bad faith.

ARTICLE 971 (E.C. 967) CONTINUATION OF CHARACTER OF POSSESSION

Subject to proof to the contrary, possession continues to have the character that it had at the time it was acquired.

Effects of Possession. Acquisitive Prescription.

ARTICLE 972 (E.C. 968) EXTENT OF ACQUISITIVE POSSESSION

A person who has possession of a movable or immovable without being its owner, or of a real right over a movable or immovable without a just title thereto may acquire the ownership of the thing or the title to the real right if his possession continues uninterrupted for fifteen years.

ARTICLE 973 (E.C. 969) PRESCRIPTION IN CASE OF GOOD FAITH

1. When a person remains in possession, in good faith and by virtue of a just title, of an immovable or of a real right over an immovable, the period of acquisitive prescription is five years.

2. Good faith is required only at the moment of conveyance of the right.

3. A just title is a document of title emanating from a person who is not the owner of the property or the beneficiary of the right that it is desired to acquire by prescription, and must be duly transcribed.

ARTICLE 974 (E.C.970) PRESCRIPTION AND WAQF PROPERTY

In any case waqf property and hereditary rights are only acquired by prescription by possession for thirty-three years.

ARTICLE 975 (E.C. 971) PRESUMPTION AS TO CONTINUANCE OF POSSESSION

Present possession, whose existence can be proved to have existed at an ascertained previous time, is presumed to have existed during the intervening time unless the contrary is proved.

ARTICLE 976 (E.C. 972) CHANGE OF NATURE OF POSSESSION

1. No one can set up prescription contrary to his title: that is to say that no one may by himself and in his own interests change the cause and origin of his possession.

2. A person may, however, acquire a title by prescription if the nature of his possession is changed either by the act of a third party or if such person sets up an adverse claim against the owner; but in such a case prescription only runs from the date of such change.

ARTICLE 977 (E.C. 973) EXTINCTIVE PRESCRIPTION

Subject to the following provisions, the rules as to extinctive prescription, in so far as they are not incompatible with the nature of acquisitive prescription, are applicable as regards the calculation of the period of prescription, its suspension or interruption, claims as regards prescription in Court, the renunciation of prescription and any agreement as to modification of the period.

ARTICLE 978 (E.C. 974) SUSPENSION OF ACQUISITIVE PRESCRIPTION

Acquisitive prescription, whatever its period, is suspended if any cause exists for such suspension.

ARTICLE 979 (E.C. 975) INTERRUPTION OF ACQUISITIVE PRESCRIPTION

1. Acquisitive prescription is interrupted if the possessor abandons or loses possession even by the act of a third party.

2. Prescription is not, however, interrupted by loss of possession if the possessor recovers possession within a year or takes proceedings for the recovery of possession within that period.

Acquisition of Movables by Possession

ARTICLE 980 (E.C. 976) POSSESSION IS PRESUMPTION OF JUST TITLE

1. A person in possession of a movable, of a real right over a movable or of a bearer warrant by virtue of a just title becomes the owner thereof if at the moment he acquired possession he was of good faith.

2. If he enters into possession in good faith and by virtue of a just title, in the belief that the thing is free of all charges and encumbrances, he acquires the thing free of such charges and encumbrances.

3. Subject to proof to the contrary, mere possession is a presumption of a just title and good faith.

ARTICLE 981 (E.C. 977) RECOVERY OF POSSESSION OF MOVABLE

1. A person who has lost or has been robbed of a movable or a bearer warrant, can within three years from the date of the loss or the theft, bring an action to recover it from a third party in possession, even if such third party is of good faith.

2. When the thing lost or stolen is found in possession of a third party who bought it in good faith on the market, at a public sale or from a merchant selling similar articles, such third party is entitled to recover from the person claiming restitution the price he paid for the thing.

Acquisition of Fruits by Possession

ARTICLE 982 (E.C. 978) ACQUISITION OF FRUITS IN GOOD FAITH

1. A possessor acquires all fruits collected so long as he is of good faith.

2. Natural or industrial fruits are deemed to be collected from the moment that they are separated. Legal fruits are deemed to be collected day by day.

ARTICLE 983 (E.C.979) ACQUISITION OF FRUITS IN BAD FAITH

A possessor in bad faith is responsible for all the fruits that he has collected or that he has failed to collect from the moment he became of bad faith. He may, however, claim refund of his expenses in connection with the production of the fruits.

Recovery of Expenses

ARTICLE 984 (E.C.980) NECESSARY, ADVANTAGEOUS AND LUXURIOUS EXPENSES

1. The owner to whom the property is restituted must pay to the possessor all expenditure of a necessary kind that he has incurred.

2. The provisions of Articles 928 and 929 (110) shall apply as regards expenditure of an advantageous kind.

3. If the expenditure is of a luxurious nature, the possessor cannot claim repayment of any of such expenditure. He may, however, remove works he has made, provided he restores the property to its original condition, unless the owner prefers to keep the works upon payment of their break-up value.

(110) Articles 924 and 925 in E.C.

ARTICLE 985 (E.C. 981) EXPENSES AND SUCCESSION IN POSSESSION

A person who takes possession from a previous owner or possessor, may, if he establishes that he has paid to such previous owner or possessor the expenditure incurred by him, demand repayment from the person claiming ownership.

ARTICLE 986 (E.C. 982) APPOINTMENT OF METHOD OF REPAYMENT

The Judge may, at the request of the owner, select the method which he considers suitable for the repayment of the expenses referred to in the two preceding Articles. He may also order repayment by periodical instalments, provided that the necessary security is supplied. The owner may free himself from this obligation by paying in advance a sum equal to the amount of such instalments less interest calculated at the legal rate up to the date fixed for payment.

Liability in Event of Loss

ARTICLE 987 (E.C. 983) LOSS BY POSSESSOR IN GOOD FAITH

1. A possessor in good faith who has enjoyed the thing in accordance with his presumed rights, is not liable to pay any compensation on this account to the person to whom he must restitute the thing.

2. He is only liable for the loss or deterioration of the thing up to the amount of profit he has received in consequence of such loss or deterioration.

ARTICLE 988 (E.C. 984) LOSS BY POSSESSOR IN BAD FAITH

If the possessor is a possessor in bad faith, he is liable for the loss or deterioration of the thing, even fortuitous, unless he proves that such loss or deterioration would have occurred even if the thing has been in the possession of the person claiming restitution.

Chapter II

Rights Derived from the Rights of Ownership

Section I

The Right of Usufruct, the Right of User and the Right of Occupation

1. Usufruct

ARTICLE 989 (E.C. 985) ACQUISITION OF RIGHT OF USUFRUCT

1. The right to usufruct may be acquired by a legal disposition, by presumption or by prescription.

2. Usufruct may be bequeathed by will to successive persons if they are alive at the moment of the bequest; it may also be bequeathed to a child "en ventre".

ARTICLE 990 (E.C. 986) PROVISIONS AS TO RIGHT OF USUFRUCT

The rights and obligations of a usufructuary are governed by the conditions imposed by the deed by which the usufruct is created and by the provisions contained in the following Articles.

ARTICLE 991 (E.C. 987) RIGHT TO ENJOYMENT OF FRUITS

The fruits of the property which is subject to the usufruct revert to the usufructuary, in proportion to the period of his usufruct, subject to the provisions of paragraph 2 of Article 997 (111).

(111) Art. 993 in E.C.

ARTICLE 992 (E.C. 988) USE OF THE PROPERTY

1. The usufructuary must use the property in the state in which he has received it and according to the object for which it was intended; he must observe the rules of good management.

2. The owner may object to any use of the property that is unlawful or unsuitable to the nature of the property. If the owner proves that his rights are endangered, he may demand security and if the usufructuary does not provide such security or if, in spite of the objections of the owner, he continues to use the property unlawfully or in a manner unsuitable to its nature, the Judge may take the property from him and entrust it to a third party for its management; the Judge may also, in circumstances of a serious nature, declare the usufruct extinguished, without prejudice to the rights of third parties.

ARTICLE 993 (E.C. 989) OBLIGATIONS OF USUFRUCTUARY

1. The usufructuary is liable, during the continuance of his enjoyment, for all normal charges in respect of the property subject to the usufruct and all expenses for repairs incidental to its maintenance.

2. The owner is obliged to pay abnormal expenses and the cost of heavy repairs which do not arise from any fault on the part of the usufructuary, but the usufructuary is bound to pay to the owner interest on the amount expended by him in this respect. If the usufructuary has himself advanced the cost, he is entitled to obtain repayment of the capital amount paid by him when the usufruct terminates.

ARTICLE 994 (E.C. 990) DILIGENCE IN PRESERVATION OF THE THING SUBJECT TO USUFRUCT

1. The usufructuary must preserve the thing with the usual diligence of a normal man.

2. He is responsible for the loss of the property even through no fault on his part, if he has delayed to restitute the property to its owner after the termination of the usufruct.

ARTICLE 995 (E.C. 991) NOTIFICATION TO OWNER

The usufructuary must give notice to the owner without delay if the property perishes, deteriorates or requires major repairs the cost of which should be borne by the owner, or if it is necessary to take protective measures against an unforeseen danger. The usufructuary must also advise the owner if a third party claims to have a right over the property.

ARTICLE 996 (E.C. 992 but para. 1 varies somewhat)
MOVABLE SUBJECT TO USUFRUCT

1. When the property subject to the usufruct is a movable, an inventory must be made thereof and the usufructuary must give security in respect thereof; if no security is given, the movable in question shall be sold and the proceeds invested in public funds and the income thereof paid to the usufructuary. or other measures may be taken as ordered by the Judge and the income taken therefrom paid to the usufructuary (112).

(112) From "or other measures" is an addition to what is contained in the E.C.

2. A usufructuary who has given security may use such things as are consumable provided that he replaces them when his usufruct comes to an end. The usufructuary is entitled to the natural increase of flocks and herds, after replacing therefrom such animals as have perished accidentally.

ARTICLE 997 (E.C. 993) TERMINATION OF USUFRUCT

1. The usufruct terminates at the end of the time for which it was fixed. If not fixed, it is deemed to have been created for the lifetime of the usufructuary. It ceases in any case upon the death of the usufructuary even before the end of the fixed time.

2. When there are standing crops on the land which is subject to usufruct, at the end of the time fixed for the usufruct or upon the death of the usufructuary, such land shall be left in possession of the usufructuary or of his heirs until the crops are ripe for harvesting, but the usufructuary or his heirs shall pay rent for that period.

ARTICLE 998 (E.C. 994) LOSS OF PROPERTY SUBJECT TO USUFRUCT

1. Usufruct is extinguished by the loss of the property, but the usufruct is transmitted to any property obtained in lieu of the property destroyed.

2. If the loss is not due to the fault of the owner, he is not bound to restore the property to its original condition, but if he restores the property, the usufruct is re-created in favour of the usufructuary if the loss was not imputable to him; in such a case paragraph 2 of Article 993 (113) applies.

(113) Art. 989 in E.C.

ARTICLE 999 (E.C. 995 but merger not mentioned therein) EXTINGUISHMENT BY NON-USER

The right of usufruct is extinguished by non-user during a period of fiteen years; it is also extinguished by merger.

2. The Right of User and Occupation

ARTICLE 1000 (E.C. 996) EXTENT OF RIGHT OF USER AND OCCUPATION

Subject to the conditions laid down in the deed by which the right is created, the extent of the right of occupation is determined by the personal requirements of the beneficiary and of his family.

ARTICLE 1001 (E.C. 997) TRANSFER OF THE RIGHT

The right of user and the right of occupation may only be transferred to third parties by virtue of a formal provision to that effect or for serious reasons.

ARTICLE 1002 (E.C. 998) APPLICATION OF THE RULES AS REGARDS THE RIGHT OF USUFRUCT

Subject to the preceding provisions, the rules as regards the right of usufruct apply to the right of user and to the right of occupation, if they are not incompatible with the nature of these two rights.

Section II

Lease of Land for Plantation of Trees (Mugharisah)

ARTICLE 1003 DEFINITION

"Mugharisah" is a contract under which an owner of land gives some of his land to another who undertakes to plant thereon firmly rooted trees, the said contract being for a period agreeing with or approximate to the period required for the said trees to bear fruit, in consideration of that other receiving a share in the said land.

ARTICLE 1004 VALIDITY OF CONTRACT

The contract of "mugharisah" cannot be created, even between the two contracting parties, except by an authenticated document duly and legally registered in the Office of the Land Registry or other office performing similar functions.

ARTICLE 1005 LOCAL CUSTOM TO BE APPLIED

If the contract of "mugharisah" does not mention the kind of trees to be planted and the manner thereof, then this shall be in accordance with local custom.

ARTICLE 1006 EXPENSES TO BE PAID BY GRANTEE

Subject to any agreement to the contrary, the cost of purchase of the trees, of planting them, and their cultivation and preservation falls upon the grantee.

ARTICLE 1007 RIGHT OF GRANTEE TO CULTIVATE THE LAND

Subject to any agreement to the contrary, the contract of "mugharisah" does not deny to the grantee the right to sew seeds or to plant vegetables or similar things upon the land, provided that he gives a share of the produce to the owner as provided for by the rules of "hekr", or monopoly (114).

(114) See Articles 362 and 1013.

ARTICLE 1008 PERIOD WITHIN WHICH THE GRANTEE MUST COMMENCE TO CARRY OUT HIS OBLIGATIONS

The contract shall be considered as a nullity and the grantee shall forfeit his rights thereunder if he does not prepare the land and take up the obligations imposed upon him within a period of three years from the date of the contract.

ARTICLE 1009 RIGHT OF GRANTEE TO OWNERSHIP OF LAND UPON WHICH TREES PLANTED

If the grantee fulfills the obligations imposed upon him by the contract and the trees bear fruit, the grantee, at the expiration of the period provided for in the contract, or in accordance with custom, shall become the owner of the share in the land apportioned to him or of the plot specifically designated and agreed upon in the contract.

ARTICLE 1010 ARBITRATION

If the number of trees planted is less than two-thirds of the number laid down in the contract, the grantee shall not be entitled to his full share as agreed and the owner shall have the option of continuing or resiliating the contract; in both cases the settlement of the dispute shall be entrusted in a Board of Arbitration composed of three members from among those having the necessary experience and integrity. Two of the said members shall be elected by the two members already appointed. If there is disagreement as to the appointment or if it is impossible for some reason for it to be made, then shall the competent Court do so. The third member of the Board shall be the President thereof and the decision of the Board shall be final.

ARTICLE 1011 DESTRUCTION OF TREES PLANTED

1. If trees have been planted in accordance with the contract and they are destroyed by reason of force majeure, the grantee is not bound to plant new trees in place of those destroyed, but it shall be deemed that he has fulfilled his obligations.

2. If for any reason a tree is destroyed some long time before it has grown and borne fruit, then it is incumbent upon the grantee to replace it, save that the period agreed upon the contract shall be considered as extended by the amount of time equivalent to that which preceded the destruction.

ARTICLE 1012 APPLICATION OF ISLAMIC LAW

Recourse shall be had to Islamic Law as to "mugharisah" in the absence of other applicable provisions.

Section III

Leases of Land for Cultivation (Mazara'ah and Musaqah)

ARTICLE 1013 DEFINITION OF CULTIVATION (MAZARA'AH)

1. "Mazara'ah" is a contract under which an owner of land delivers part of his land to another to plant the same with seasonable cereals or vegetables in consideration of a share, in cash or in kind, in the produce.

2. This share of the produce is called "hekr".

ARTICLE 1014 DEFINITION OF IRRIGATION (MUSAQAH)

1. "Musaqah" is a contract under which an owner of fully grown trees or of cultivated land delivers the same to another who undertakes to water them until they bear fruit.

2. The grantee has thereby an acknowledged right to a determined share in the yield.

ARTICLE 1015 PERIOD OF CONTRACT OF "MUSAQAH" MUST BE DETERMINED

The contract of "musaqah" must fix the period thereof.

ARTICLE 1016 OBLIGATIONS OF CONTRACTING PARTIES

The grantee is bound to do everything necessary to fulfil the obligations imposed upon him by the contract, but the cost of supplying animals, manure, electric power and such like shall be upon the planter and the owner in proportion to each of their shares. The owner shall prepare and plant the trees, dig wells, cisterns and such like works.

ARTICLE 1017 CUSTOM AND USAGE TO BE OBSERVED

In contracts of "mazara'ah" and "musaqah" the special rules of local custom and usage shall be observed, save where the same are incompatible with the law.

Section IV

Servitudes

ARTICLE 1018 (E.C. 1015) DEFINITION

A servitude is a right which limits the enjoyment of a property for the benefit of another property belonging to another owner. A servitude may be imposed on State property in so far as it is not incompatible with the use for which such property is intended.

ARTICLE 1019 (E.C. 1016) ACQUISITION OF SERVITUDES

1. The right to a servitude is acquired by a legal disposition or by inheritance.

2. Only apparent servitudes, including rights of way, can be acquired by prescription.

ARTICLE 1020 (E.C. 1017) CREATION OF APPARENT SERVITUDES BY INTENTION OF ORIGINAL OWNER

1. Apparent servitudes may also be created by the intention of the original owner (115).

2. An intention of the original owner is deemed to exist when it is established, by any means of proofs, that the owner of two separate properties has made between the two properties an apparent distinction, thereby creating a relationship of subordination between them which would indicate the existence of a servitude if the two properties belonged to different owners. If, in such a case, the two properties pass into the hands of different owners without any change in their condition, a servitude is deemed, in the absence of a clear condition to the contrary, to have been constituted to the benefit of or as a burden on the two properties respectively.

(115) The words "intention of the original owner" are a translation of the Arabic "Takhsis min al malik al asli" which are inspired by the term used in the French Civil Code "destination de pere de famille". "Destination" has the meaning of " a perpetuelle demeure". There must be something to show that the owner intended the status quo to remain permanently.

ARTICLE 1021 (E.C. 1018) RESTRICTIONS ON RIGHTS OF OWNER OF PROPERTY

1. In the absence of an agreement to the contrary, if specific restrictions have been imposed limiting the right of the owner of a property to build freely thereon, such as the prohibition to build above a certain height or on an area in excess of a specific area, such restrictions constitute servitude which are burdens on the property concerned in favour of properties to whose benefit these restrictions have been imposed.

2. Any breach of these servitudes gives rise to a claim for material redress. The Court may, however, only grant damages if it considers that there are reasons for so doing.

ARTICLE 1022 (E.C. 1019) PROVISIONS RELATING TO SERVITUDES

Servitudes are governed by rules laid down in the deed by which they are created, by local custom and by the following provisions.

ARTICLE 1023 (E.C. 1020) WORKS WHICH OWNER OF DOMINANT TENEMENT IS ENTITLED TO CARRY OUT

1. The owner of the dominant tenement is entitled to carry out the works necessary to use and preserve his right of servitude; he must use his right in the least harmful manner possible.

2. New requirements of the dominant tenement cannot entail any increase in the burden of the servitude.

ARTICLE 1024 (E.C. 1021) WHAT OWNER OF SERVIENT TENEMENT NOT OBLIGATED TO DO

In the absence of an agreement to the contrary, the owner of the servient tenement is under no obligation to carry out work for the benefit of the dominant tenement, unless it is an accessory work necessitated by the normal use of the servitude.

ARTICLE 1025 (E.C. 1022) COST OF NECESSARY WORKS

1. In the absence of an agreement to the contrary, the cost of the necessary works for the use and preservation of the servitude must be borne by the owner of the dominant tenement.

2. If the owner of the servient tenement is responsible for carrying out these works at his own cost, he has always the right to free himself of this burden by abandoning the servient tenement wholly or in part to the owner of the dominant tenement.

3. If the works also benefit the owner of the servient tenement, the cost of upkeep falls on the two parties in proportion to the profit derived by each of them.

ARTICLE 1026 (E.C. 1023) WORKS DIMINISHING USE OF SERVITUDE

1. The owner of the servient tenement has no right to do anything which will tend to diminish the use made of the servitude or to make it more inconvenient. He cannot, in particular, either change the condition in which the land was or change the place originally fixed for the use of the servitude by another.

2. When, however, the place originally fixed has become such as to increase the burden of the servitude or to cause the servitude to hinder the owner of the servient tenement making improvements to the servient tenement, he may demand that the servitude be transferred to another part of the property or to another property belonging to him or to a third party who consents thereto, provided that the owner of the dominant tenement is able to exercise his rights of servitude in these new conditions as easily as he was able to do before the change.

ARTICLE 1027 (E. C. 1024) DIVISION OF DOMINANT TENEMENT

1. If the dominant tenement is divided, the servitude continues to benefit each part thereof, provided that the burden on the servient property is not increased.

2. If, however, the servitude only benefits one of the divided parts of the dominant tenement, the owner of the servient tenement may demand that it ceases as regards the other parts.

ARTICLE 1028 (E. C. 1025) DIVISION OF SERVIENT TENEMENT

1. If the servient tenement is divided, the servitude continues to subsist in respect of each part thereof.

2. If, however, the servitude is not actually used and cannot be used on certain of these divided parts, the owner of each of them may demand that it ceases as regards the part belonging to him.

ARTICLE 1029 (E. C. 1026) TERMINATION OF RIGHTS TO A SERVITUDE FOR SPECIAL REASONS

Rights to a servitude cease to exist by the expiration of the period for which they were created, by the total loss of the servient tenement or of the two properties by the same owner; the rights of the servitude are, however, revived if the two properties cease, with retroactive effect, to be held jointly by the same owner.

ARTICLE 1030 (E. C. 1027) TERMINATION OF SERVITUDES BY NON-USER

1. The rights to a servitude are extinguished by non-user for a period of fifteen years; if the servitude is created for the benefit of a waqf property, this period shall be thirty-three years. The manner of the exercise of a right of servitude may, as the servitude itself, be modified by prescription.

2. The user of the servitude by one of the co-owners in common of a dominant tenement interrupts the prescription in favour of the other co-owners; in the same way, the suspension of prescription in favour of one of these co-owners suspends prescription in favour of the others.

ARTICLE 1031 (E. C. 1028) TERMINATION OF SERVITUDE BY CHANGE OF CONDITIONS

1. The servitude ceases to exist if conditions so change that the right can no longer be used.

2. The servitude is revived if conditions are re-established in such a way that the right can again be used, unless the right of servitude has been extinguished by non-user.

ARTICLE 1032 (E. C. 1029) FREEING OF SERVIENT TENEMENT FROM SERVITUDE

The owner of a servient tenement may free himself wholly or partially of the servitude if the servitude has lost all its utility for the dominant tenement or if its actual utility has been reduced out of proportion to the burden imposed on the servient tenement.

BOOK FOUR

Accessory Real Rights or Real Securities

Chapter I

Legal Mortgage (116)

(116) Mortgages and privileges are accessory real rights, i.e., if the main obligations be null the mortgage or privilege produces no effect.

ARTICLE 1033 HOW LEGAL MORTGAGE ARISES

The following are entitled to a legal mortgage :-

1. The seller of immovable property, upon the immovable property itself, to secure the performance of the obligations resulting from the contract of sale;

2. Co-heirs, joint owners and other co-participants, for proper distribution of shares, on the share of the immovables of the partitioners charged with such duty;

3. The State, upon the property of criminal offenders and of persons responsible for Civil Rights, in accordance with the provisions of the Penal Code and the Criminal Procedure Code.

Chapter II

Mortgage by Agreement

Section I

The Constitution of Mortgages

ARTICLE 1034 (E.C. 1031 with addition) MANNER IN WHICH MORTGAGE IS CONSTITUTED

1. A mortgage can only be constituted by an authentic document (117) as provided for by the Regulations as to Real Property.

(117) The words following in this paragraph are not contained in the E.C.

2. The costs of this authentic document are, in the absence of an agreement to the contrary, borne by the mortgagor.

ARTICLE 1035 (E.C. 1032) MORTGAGOR OWNER OF PROPERTY AND WITH LEGAL CAPACITY

1. The mortgagor may be the debtor himself or a third party who consents to mortgage his property in the interests of the debtor.

2. In both cases, the mortgagor must be the owner of the mortgaged property and must have legal capacity to dispose of it.

ARTICLE 1036 (E.C. 1033) IF MORTGAGOR NOT OWNER

1. If the mortgagor is not the owner of the mortgaged property, the mortgage contract becomes valid if ratified by the true owner of the property by an official deed. In the absence of ratification, the mortgage is only effective from the time that the immovable becomes the property of the mortgagor.

2. A mortgage on property in expectancy is void.

ARTICLE 1037 (E.C. 1034) EXCEPTION

A mortgage constituted by an owner whose title to the property is subsequently annulled, resiliated, abolished or ceases to exist for any other reason, remains a valid mortgage in favour of the mortgagee creditor if he has acted in good faith at the time of the conclusion of the mortgage.

ARTICLE 1038 (E.C. 1035) NATURE OF PROPERTY UPON WHICH MORTGAGE MAY BE CONSTITUTED

1. In the absence of any provision of the law to the contrary, a mortgage can only be constituted on immovable property (118) or upon a usufruct attached to immovable property.

(118) The words following in this paragraph are not contained in the E.C.

2. The mortgaged property must be marketable and capable of being sold by public auction; it must be specifically and precisely described both as regards its nature and situation, and such description must be contained either in the deed constituting the mortgage or in a subsequent authentic document, otherwise the mortgage is void.

ARTICLE 1039 (E.C. 1036) ACCESSORIES OF MORTGAGED PROPERTY

In the absence of an agreement to the contrary, and without prejudice to the privilege provided for by Article 1151 (119) attached to sums due to contractors or to architects, a mortgage extends to the accessories of the mortgaged property which are considered to be immovable accessories, particularly the servitudes, property forming part of the immovable as a result of the use to which it is put and to improvements and other works which benefit the owner.

(119) Art. 1148 in E.C.

ARTICLE 1040 (E.C. 1037) PRODUCE OF THE PROPERTY

From the date of the transcription of the formal summons to pay, the fruits and revenues of the mortgaged property shall be assimilated to the immovable and distributed in the same way as the price of the property.

ARTICLE 1041 (E.C. 1038) MORTGAGE OF CONSTRUCTIONS OF LAND OF ANOTHER

The owner of constructions erected on land belonging to a third party may grant a mortgage on these constructions. In such a case, the mortgagee shall have a preferential claim for recovery of his debt on the price of the breakup value of the constructions if they are demolished, and on the compensation paid by the owner of the land if he keeps the constructions in accordance with the rules of accession.

ARTICLE 1042 (E.C. 1039) MORTGAGE OF IMMOVABLE HELD IN COMMON

1. A mortgage granted by all the co-owners of an immovable held in common remains effective whatever may be the ultimate result of a partition of the immovable or of its sale by auction owing to impossibility of partition.

2. If one of the owners grants a mortgage on his undivided share or on a divided part of an immovable and as a result of the partition, a property other than the mortgaged property is attributed to him, the mortgage will be transferred, with its degree of priority, to a portion of this property equivalent in value to the value of the property formerly mortgaged. This portion will, upon petition, be fixed by an order of the Judge. The mortgagee shall be bound, within ninety days of the notification of the transcription of the partition made to him by any interested party, to proceed with a new inscription describing the portion of the property to which the mortgage has been transferred. The mortgage so transferred shall not have any prejudicial effect on a mortgage already granted by all the co-owners or on the privileges of co-partitioners.

ARTICLE 1043 (E.C. 1040) DEBTS WHICH MAY BE SECURED BY MORTGAGE

A mortgage may be granted to secure a conditional, future or contingent debt, and may also be granted to secure an opened credit or the opening of a current account, provided that the amount of the debt secured, or the maximum account which such debt may attain, is fixed in the mortgage deed.

ARTICLE 1044 (E.C. 1041) EXTENT OF SECURITY AND MORTGAGE

In the absence of a provision of the law or of an agreement to the contrary, every part of the mortgaged immovable or immovables shall secure the whole of the debt, and each part of the debt is secured by the whole of the mortgaged immovable or immovables.

ARTICLE 1045 (E.C. 1042) RELATION OF MORTGAGE TO SECURED DEBT

1. In the absence of a provision of the law to the contrary, the mortgage cannot be separated from the debt that it secures, but depends, both as regards its validity and as regards its extinction, upon the debt itself.

2. If the mortgagor is a person other than the debtor, he may, in addition to the defences that are personal to him, avail himself of those which belong to the debtor as regards the debt; he keeps this right notwithstanding the renunciation of the debtor.

ARTICLE 1046 EXTENT OF VALIDITY OF INSCRIPTION

Inscription of (a mortgage upon) immovable property retains its validity for a period of fifteen years, but the effects thereof terminate if the inscription is not renewed before the expiry of that period (120).

(120) As it now reads in Arabic there would appear to be an error in the Article as printed. The words words in brackets have been inserted in the belief that they were intended but not printed.

Section II
The Effects of a Mortgage

1. The Effects of a Mortgage as Between the Parties

As Regards the Mortgagor

ARTICLE 1047 (E.C. 1043) DISPOSAL OF MORTGAGED PROPERTY

A mortgagor may dispose of the mortgaged property, but any disposal of the property by him does not affect the right of the mortgagee creditor.

ARTICLE 1048 (E.C. 1044) MANAGEMENT OF MORTGAGED PROPERTY

The mortgagor may carry on the management of the mortgaged property and collect the fruits thereof until such time as they become incorporated in the immovable property.

ARTICLE 1049 (E.C. 1045) LEASE OF MORTGAGED PROPERTY

1. A lease entered into by a mortgagor cannot have effect against a mortgagee unless such lease has been given an established date before the transcription of the formal summons to pay. A lease that has not an established date before this transcription or that has been entered into after the transcription of the summons, without payment of the rent having been made in advance, will not have effect as against a mortgagee, unless it may be considered to fall within the category of acts of good management.

2. If the duration of the lease entered into before the transcription of the summons exceeds nine years, the lease has effect against the mortgagee only for nine years, unless it was transcribed before the inscription of the mortgage.

ARTICLE 1050 (E.C. 1046) RIGHT OF MORTGAGEE IN RESPECT OF RECEIPTS OR ASSIGNMENTS OF RENTS IN ADVANCE

1. A receipt or an assignment of rent in advance for a period not exceeding three years is not valid as against a mortgagee unless it has an established date prior to the transcription of the summons to pay.

2. If the payment or the assignment of rent is made for a period exceeding three years, it will only be valid as against a mortgagee if it has been transcribed before the inscription of the mortgage. In default of such transcription the period will be reduced to three years, subject to the provisions of the preceding paragraph.

ARTICLE 1051 (E.C. 1047) MORTGAGOR GUARANTOR OF EFFECTIVENESS OF MORTGAGE

A mortgagor is the guarantor of the effectiveness of the mortgage. The mortgagee may oppose any act or omission that appreciably diminishes his security, and, in case of emergency, take all necessary preservative measures and claim from the mortgagor the expenses incurred in this respect.

ARTICLE 1052 (E.C. 1048) PERISHING OR DETERIORATION OF MORTGAGED PROPERTY

1. If the mortgaged property perishes or deteriorates by the fault of the mortgagor, the mortgagee may either claim adequate security or immediate payment of the debt.

2. If the loss or deterioration is not imputable to the mortgagor and the mortgagee does not agree to leave his claim without security, the debtor may either furnish adequate security or pay the debt in full before it falls due. In the latter case, if the debt does not carry interest, the mortgagee has only a right to an amount equal to the amount of his claim less the interest calculated at the legal rate from the date of payment to the date of maturity.

3. In all cases, if acts are done which may result in the loss of or deterioration to the mortgaged property, or which may render the mortgaged property insufficient to secure the debt, the mortgagee may apply to the Judge to order the cessation of such acts and the adoption of the necessary measures to avoid the occurrence of the loss.

ARTICLE 1053 (E.C. 1049) TRANSFER OF MORTGAGE OF DETERIORATED OR LOST PROPERTY

In the event of loss of or deterioration to the mortgaged property for any reason whatsoever, the mortgage is transferred, in its order of rank, to any right obtained as a result of such loss or deterioration, such as compensation, monies paid on account of insurance or payments on account of expropriation for public utility.

As Regards the Mortgagee

ARTICLE 1054 (E.C. 1050) RESTRICTION OF EXECUTION TO MORTGAGED PROPERTY

If the mortgagor is a person other than the debtor, only the mortgaged property, to the exclusion of his other property, may be proceeded against and the mortgagor shall not, in the absence of an agreement to the contrary, have the right to demand the sale of the debtor's property before the sale of the mortgaged property.

ARTICLE 1055 (E.C. 1051) EXECUTION UPON MORTGAGED PROPERTY

1. A creditor may, upon a summons to the debtor to pay, proceed, within the time allowed and in accordance with the forms prescribed by the Code of Civil and Commercial Procedure, with the expropriation and the sale of the mortgaged property.

2. If the mortgagor is a person other than the debtor, he may avoid any proceedings against him by abandoning the mortgaged property, according to the procedure and the rules laid down for the abandonment of an immovable by a third party holder.

ARTICLE 1056 (E.C. 1052) CONDITIONS FOR ACQUISITION OF MORTGAGED PROPERTY

1. Any agreement, even if entered into after the constitution of the mortgage, which authorizes the creditor in case of non-payment of the debt on maturity to acquire the mortgaged property at a fixed price, whatever that price may be, or to sell the mortgaged property without observing the formalities prescribed by law, is void.

2. It may, however, be agreed, after the debt or one of the instalments of the debt has fallen due, that the debtor transfers to the creditor the mortgaged property in payment of the debt.

2. The Effects of Mortgage as Regards Third Parties

ARTICLE 1057 (E.C. 1053) CONDITIONS AS TO INSCRIPTION AND NOTATION

1. Subject to the provisions laid down for bankruptcy, a mortgage shall be effective as against third parties only if the deed or the judgment establishing the mortgage has been inscribed before third parties have acquired real rights on the property.

2. The assignment of a right secured by an inscription, the right resulting from the legal or contractual subrogation into the right and the assignment of priority in rank of an inscription in favour of another creditor, are only enforceable as against third parties if they are inscribed in the margin of the original inscription.

ARTICLE 1058 (E.C. 1054) PUBLICATION OF THE MORTGAGE

The inscription, its renewal, its radiation, the annulment of the radiation and all the effects thereof are governed by the provisions of the law regulating the publication of real rights.

ARTICLE 1059 (E.C. 1055) COST OF INSCRIPTION

In the absence of an agreement to the contrary, the mortgage shall bear the cost of inscription, its renewal and its radiation.

The Right of Preference and the Right of Tracing

ARTICLE 1060 (E.C. 1056) RELIANCE UPON RANK OF INSCRIPTION IN PAYMENT

Mortgagees will be paid before unsecured creditors out of the proceeds of sale of the mortgaged property, or out of any monies obtained in substitution thereof, in the order of the rank of their inscriptions, even when their inscriptions are entered on the same day.

ARTICLE 1061 (E. C. 1057) FROM WHEN MORTGAGE RANKS

A mortgage ranks from the date of its inscription, even if it secures a conditional future or contingent debt.

ARTICLE 1062 (E. C. 1058) RESULTS OF INSCRIPTION

1. The inscription of a mortgage will have the effect of automatically collocating and ranking with the mortgage debt the cost of deed, of the inscription and of the renewal.

2. If the rate of interest is fixed in the deed, the inscription of the mortgage will have the effect of collocating in the same rank as the mortgage debt the interest of the two years immediately preceding the transcription of the formal summons to pay and the interest due since that date to the date of sale by public auction, without prejudice to specific inscriptions made to secure other interest that has already become due, which interest will take rank with effect as from the date of the registration of such specific inscriptions. The transcription by one of the creditors of a formal summons to pay will benefit all the other creditors.

ARTICLE 1063 (E. C. 1059) ASSIGNMENT OF RANK

A mortgagee may, within the limits of his secured debt, assign his rank in favour of another creditor having a mortgage inscribed on the same property. The defences available against the first creditor, with the exception of those connected with the extinction of his claim when that extinction occurs after the assignment of the rank, can be raised against the second creditor.

ARTICLE 1064 (E. C. 1060) PERMISSIBILITY OF PROCEEDINGS OF EXPROPRIATION AGAINST THIRD PARTY HOLDER

1. A mortgagee may, upon maturity of the debt, take proceedings for the expropriation of the mortgaged property against a third party holder, unless this third party holder chooses to pay the debt, redeem the mortgage or abandon the property.

2. Any person is deemed to be a third party holder who acquires in any way the ownership of the property or any other real right over the property capable of being mortgaged, without being personally responsible for the debt secured by the mortgage.

ARTICLE 1065 (E. C. 1061) PAYMENT OF DEBT BY THIRD PARTY HOLDER

A third party holder may, upon maturity of the debt secured by the mortgage, pay the debt and its accessories including the costs of proceedings from the date of the formal summons, and will retain this right up to the date of the sale by public auction. In such a case, he has a claim for all he has paid against the debtor and against the former owner of the mortgaged property. He may also be subrogated into the right of the creditor who has been paid in full, with the exception of those rights relative to guarantees furnished by a person other than the debtor.

ARTICLE 1066 (E. C. 1062) MAINTENANCE OF INSCRIPTION

A third party holder must maintain the inscription of the mortgage to the benefit of which he is subrogated to the creditor, and renew it, if necessary, until radiation of the inscriptions that existed, at the time of the transcription of his title to the property.

ARTICLE 1067 (E. C. 1063) COMPELLING THIRD PARTY HOLDER TO PAY

1. If, by reason of his acquisition of the mortgaged property, the third party holder is debtor of a sum due immediately for payment and sufficient to satisfy all the creditors whose rights are inscribed on the property, each one of the creditors may compel him to pay his claim provided that his title deed to the property has been transcribed.

2. If the debt owed by the third party holder is not yet due for payment, or is less than the debts due to the creditors, or different from them, the creditors may, if they are all agreed, claim from the third party holder payment of what he owes, up to the amount due to them, and payment will be effected in accordance with the conditions on which he has agreed to pay in his original undertaking, and at the time agreed upon for payment.

3. In neither case can the third party holder avoid payment to the creditors by abandoning the property, but when payment has been made to the creditors the property is deemed to be free of all mortgages and the third party holder has the right to call for radiation of the inscriptions existing on the property.

ARTICLE 1068 (E.C. 1064) PURGE OF PROPERTY FROM MORTGAGE

1. The third party holder who has transcribed his title to the property may purge the property of any mortgage inscribed before the transcription of his title.

2. He can exercise this right even before the mortgagees have served upon the debtor a formal summons to pay, or have served upon the third party holder any summons, and he keeps this right up to the date of the filing in Court of the conditions of sale of the property.

ARTICLE 1069 (E.C. 1065) MANNER IN WHICH PURGE TO BE CARRIED OUT

If the third party holder decides to proceed with the purge of the property, he must serve upon the inscribed creditors, at their elected domiciles indicated in their inscriptions, a summons containing the following particulars :-

(a) An extract of his title deed, setting out the particulars and the nature and date of the act of disposition, the name and full and precise particulars of the previous owner of the property, the situation and a detailed and precise description of the property, and, if the disposal is a sale, the price and the charges, if any, that may be considered as part of the price;

(b) The date and number of the transcription of his title;

(c) The sum at which he values the property, even if the property is disposed of by sale: this sum must not be less than the reserve price in the case of expropriation nor in any case less than the sum remaining to be paid by the third party holder on the price of the property if the act of disposition was a sale. If parts of the property are charged with separate mortgages, each part must be valued separately;

(d) A list of rights inscribed on the property before transcription of his title: this list shall contain the date of the inscriptions, the amount of the inscribed debts and the names of the creditors.

ARTICLE 1070 (E.C. 1066) OBLIGATION OF THIRD PARTY HOLDER TO NOTIFY HIS READINESS TO PAY

The third party holder must, by the same summons, declare that he is prepared to pay off the inscribed debts up to the amount at which he has valued the property; his offer need not be accompanied by actual production of the money but must be an offer of a sum payable in cash, whatever may be the date at which the inscribed debts become due.

ARTICLE 1071 (E.C. 1067) TIME FIXED FOR SALE OF PROPERTY

Every inscribed creditor and every surety of an inscribed debt has the right to apply for the sale of the property which the third party holder wishes to purge, provided that his application is made within thirty days of the date of the last formal summons. This period will be increased by the additional time allowed for distance between the actual and the elected domicile of the creditor; this additional time allowed for distance shall not exceed thirty additional days.

ARTICLE 1072 (E.C. 1068) HOW DEMAND FOR SALE IS TO BE SUBMITTED

1. The application shall be made by a summons to the third party holder and to the former owner, signed by the applicant or by his representative holding a special mandate for this purpose. The applicant must deposit to the Treasury of the Court a sum which is sufficient to cover the cost of the sale by auction, but he shall have no right to a refund of expenses advanced by him if no higher price than that offered by the third party holder is obtained as a result of the auction. The failure to comply with any one of these conditions entails the nullity of the application.

2. The applicant may not renounce his application without the consent of all the inscribed creditors and all the sureties.

ARTICLE 1073 (E.C. 1069) PROCEDURE WHEN APPLICATION FOR SALE MADE

1. When an application is made for the sale of a property, the formalities laid down for compulsory expropriation must be followed. The sale shall take place at the request of either the applicant or of the third party holder, whoever shall have more interest in expediting the sale. The applicant must mention in the notices of sale the price at which he has valued the property.

2. The purchaser by auction is liable, in addition to the payment of the price of the adjudication and the cost of formalities for the purge, to refund to the third party holder who is dispossessed the cost of his deed, of its transcription and the cost of the summons served by him.

ARTICLE 1074 (E.C. 1070) IF NO DEMAND FOR SALE MADE

If the sale of the property is not applied for within the period and in accordance with the procedure

laid down, the ownership of the property, freed from all inscriptions, shall be vested finally on the third party holder if he pays the sum at which he has valued the property to the creditors whose rank entitled them to payment, or if he deposits this sum in the Treasury of the Court.

ARTICLE 1075 (E.C. 1071) ABANDONMENT OF MORTGAGED PROPERTY AND APPOINTMENT OF RECEIVER

1. The abandonment of the mortgaged property is made by a declaration submitted to the Registrar of the competent Court of First Instance by the third party holder who must apply for the entry of his declaration in the margin of the transcription of the formal summons to pay and who must, within five days from the date of the declaration, notify the abandonment to the creditor who is conducting the proceedings of expropriation.

2. The party who has most interest to expedite the sale may apply to the Judicial Authority for the nomination of a receiver against whom the proceedings of expropriation may be taken. The third party holder, if he applies, will be appointed receiver.

ARTICLE 1076 (E.C. 1072) SUMMONS TO THIRD PARTY HOLDER BEFORE EXPROPRIATION

If the third party holder does not opt for payment of the inscribed debts, the purge of the property or the abandonment of the property, the mortgagee can only take expropriation proceedings against him, in accordance with the provisions of the Civil and Commercial Procedure Code, after he has summoned him to pay the debt become due or to abandon the property. This summons shall be notified after or at the same time as the summons to pay is served on the debtor.

ARTICLE 1077 (E.C. 1073) RIGHT OF THIRD PARTY HOLDER TO RAISE DEFENCES WHICH CAN BE RAISED BY DEBTOR

1. The third party holder who has transcribed his title deed and who was not a party to the proceedings in which judgment was given against the debtor to pay the debt, may, if the judgment was subsequent to the transcription of his title, raise the defences which could have been raised by the debtor.

2. He may, in any case, raise defences which the debtor still has the right to raise after the judgment.

ARTICLE 1078 (E.C. 1074) THIRD PARTY HOLDER MAY TAKE PART IN AUCTION

The third party holder may take part in the auction on condition that he does not offer a price lower than the sum that he still owes on the price of the property which is being sold.

ARTICLE 1079 (E.C. 1075) ACQUISITION OF PROPERTY BY THIRD PARTY HOLDER AT AUCTION

If the mortgaged property is expropriated, even after proceedings for purge or abandonment have been taken and the third party holder acquires the property at the auction, he will be deemed to be the owner of the property by virtue of his original title deed and the property will be purged of all inscriptions if he pays the price for which he acquired the property at the auction or if he deposits the price in the Treasury of the Court.

ARTICLE 1080 (E.C. 1076) ACQUISITION OF PROPERTY AT AUCTION BY PERSON OTHER THAN THIRD PARTY HOLDER

If, in the preceding cases, a person other than the third party holder acquired the property at the auction, he will hold his right by virtue of the judgment of adjudication from the third party holder.

ARTICLE 1081 (E.C. 1077) RIGHT OF THIRD PARTY HOLDER TO EXCESS IN SALE PRICE AT AUCTION

If the price at which the property is sold by auction exceeds the total of the sums due to the inscribed creditors, the difference in excess belongs to the third party holder; and the mortgagee creditors of the third party holder may be paid out of his excess.

ARTICLE 1082 (E.C. 1078) RE-VESTING OF REAL RIGHTS IN THIRD PARTY HOLDER

Servitudes and other real rights that the third party holder had on the property before he acquired the property are re-vested in him.

ARTICLE 1083 (E.C. 1079) RESTITUTION OF FRUITS AFTER SUMMONS TO PAY OR ABANDON PROPERTY

The third party holder is liable to restitute the fruits of the mortgaged property from the date he has been summoned either to pay or to abandon the property. If legal proceedings are abandoned within three years, he has only to account for the fruits as from the day that a new summons is served on him.

ARTICLE 1084 (E.C. 1080) RIGHT OF THIRD PARTY HOLDER OF ACTION FOR WARRANTY

1. The third party holder has, against his preceding owner, a right of action for warranty to the extent that a successor in title has against the person from whom he has acquired the property for valuable consideration or as a gift.

2. He has also a right of action against the debtor for payment of any sums paid by him, for any reason whatsoever, in excess of the amount due him in accordance with this title deed. He is subrogated into the rights of the creditors discharged by him particularly into the guarantees furnished by the debtor, but not into those furnished by a party other than the debtor.

ARTICLE 1085 (E.C. 1081) RESPONSIBILITY OF THIRD PARTY HOLDER FOR DETERIORATION

The third party holder is personally liable towards creditors for any deterioration caused to the immovable by his negligence.

Section III

Extinguishment of the Mortgage

ARTICLE 1086 (E.C. 1082) EXTINGUISHMENT OF MORTGAGE BY EXTINGUISHMENT OF SECURED DEBT

The mortgage is extinguished when the secured debt is extinguished; it is revived, together with the debt, if the cause by reason of which it was extinguished disappears, without prejudice, however, to the rights acquired by a third party in good faith in the interval between the extinguishment of the right and its revival.

ARTICLE 1087 (E.C. 1083) EXTINGUISHMENT OF MORTGAGE BY PURGE

When the formalities of a purge are carried out, the mortgage by agreement is definitely extinguished even if the ownership of the third party holder who proceeded with the purge disappears for any cause whatsoever.

ARTICLE 1088 (E.C. 1084) EXTINGUISHMENT OF MORTGAGE AS RESULT OF COMPULSORY SALE

When the mortgaged property is sold by public auction as a result of compulsory expropriation proceedings taken against either the owner, the third party holder or the receiver to whom the abandoned property was delivered, the mortgage rights encumbering the property are extinguished by the deposit of the purchase price or by payment thereof to the inscribed creditors who, by virtue of their rank, are entitled to receive payment of their claims out of that price.

Chapter III

Judgment Charges upon Immovable Property

Section I

Constitution of Judgment Charge

ARTICLE 1089 (E.C. 1085 with omission of para. 2 thereof)
JUDGMENT CHARGE ON IMMOVABLE PROPERTY BY VIRTUE OF ENFORCEABLE JUDGMENT

Every creditor who has obtained an enforceable judgment rendered on the merits of the case in which the debtor is condemned to a liquidated amount, may, if he is of good faith, obtain as security for his claim in principal, interest and costs, a judgment charge over the immovable property of his debtor.

ARTICLE 1090 (E.C. 1086) JUDGMENT OF FOREIGN COURT OR ARBITRATION AWARD

A judgment charge cannot be obtained by virtue of a judgment rendered by a foreign Court or by virtue of an arbitration award until the judgment or the award has been made enforceable.

ARTICLE 1091 (E.C. 1087) JUDGMENT CHARGE BY VIRTUE OF JUDGMENT OF COMPROMISE OR BY AGREEMENT

A judgment charge may be obtained by virtue of a judgment confirming a compromise or an agreement between the parties, but not by virtue of a judgment rendered as to the validity of a signature.

ARTICLE 1092 (E.C. 1088) UPON WHAT JUDGMENT CHARGE MAY BE OBTAINED

A judgment charge may only be obtained on one or more specific immovables belonging to the debtor at the time of the inscription of this right and capable of being sold by public auction.

ARTICLE 1093 (E.C. 1089) PROCEDURE TO BE FOLLOWED

1. A creditor who wishes to obtain a judgment charge on the immovable property of his debtor must submit an application to the President of the Court of First Instance in the District in which the immovable property on which he desired to obtain the charge is situated.

2. An authenticated copy of the judgment or a certificate by the Office of the Clerks of the Court containing the operative part of the judgment must be annexed to the application which will contain the following particulars:

(a) The creditor's surname, first name, profession, actual place of abode, and elected domicile within the town in which the Court is situated ;

(b) The surname, first name, profession and place of abode of the debtor;

(c) The date of the judgment and designation of the Court that rendered the judgment;

(d) The amount of the debt. If the debt mentioned in the judgment is not a liquid amount, the President of the Court may liquidate it provisionally and fix the amount for which a judgment charge may be obtained;

(e) An exact and precise description of the immovable properties, their situation, together with documents establishing their value.

ARTICLE 1094 (E.C. 1090) ORDER FOR JUDGMENT CHARGE

1. The President of the Court will record his order for a judgment charge at the foot of the application.

2. The President of the Court should, however, in giving an order for a judgment charge, take into consideration the amount of the debt and the approximate value of the immovable properties set out in the application, and should, if necessary, restrict the judgment charge to some or one of these immovables, or to a part in an immovable if he considers that this is sufficient to secure the principal of the debt, the interest thereon and the cost thereof due to the creditors.

ARTICLE 1095 (E.C. 1091) NOTIFICATION OF ORDER

Upon the same day as the order authorizing the judgment charge is rendered, the Office of the Clerks of the Court must notify it to the debtor, endorse it on the authenticated copy of the judgment or on the certificate annexed to the application for a judgment charge, and inform the Office of the Clerks of the Court that has rendered the Judgment so that they may endorse the order on any other copy of the judgment or any other certificate that will be delivered to the creditor.

ARTICLE 1096 (E.C. 1092) APPEAL BY DEBTOR

1. The debtor may lodge an appeal against the order authorizing the judgment charge either before the Judge who has given the order or before the Court of First Instance.

2. An endorsement must be made, in the margin of the inscription, of any order or of any judgment annulling the order which has authorized the judgment charge.

ARTICLE 1097 (E.C. 1093) RIGHT OF CREDITOR TO APPEAL

If, either at the time of the application or as result of an appeal by the debtor, the President of the Court rejects the application of the creditor for a judgment charge, the creditor may appeal to the Court of First Instance against the order rejecting the application.

Section II

The Effects of a Judgment Charge, its Reduction and Extinguishment

ARTICLE 1098 (E.C. 1094) RIGHT TO APPLY FOR REDUCTION

1. Any interested party may apply for the reduction of the judgment charge to reasonable proportions, if the value of the immovable properties charged herewith is in excess of the amount which is sufficient to secure the debt.

2. The reduction of the judgment charge may be operated either by way of restriction of the charge to one part of the immovable or immovables on which it is inscribed or by the transfer of the charge to another immovable the value of which adequately secures the debt.

3. The costs required for carrying out the reduction, even if made with the consent of the creditor, are payable by the person who has applied for the reduction.

ARTICLE 1099 (E.C. 1095) APPLICATION OF PROVISIONS AS TO MORTGAGES BY AGREEMENT TO JUDGMENT CHARGES

A creditor who has obtained a judgment charge has the same rights as a mortgagee who has obtained a mortgage. Subject to any special provision of the law, the judgment charge is governed by the same provisions as a mortgage, especially as regards its inscription, its renewal, its radiation, the indivisibility of the right, its effect and its extinguishment.

Chapter IV

Pledge

Elements of a Pledge

ARTICLE 1100 (E.C. 1096) DEFINITION

Pledge is a contract by which a person undertakes as security for his debt or that of a third party, to hand over to the creditor or to a third person chosen by the parties, a thing over which he constitutes, in favour of the creditor, a real right, and by which the creditor is allowed to retain the thing pledged until repayment of the debt and to obtain payment of his claim out of the price of such thing, no matter in whose hands it may be, in preference to unsecured creditors and to creditors following him in rank.

ARTICLE 1101 (E.C. 1097) THINGS WHICH MAY BE SUBJECT OF PLEDGE

Only movables or immovables which can be sold independently by public auction may be the object of a pledge.

ARTICLE 1102 (E.C. 1098) PROVISIONS APPLICABLE TO PLEDGE

The provisions of Article 1036 and of Articles 1043-1045 (121) relating to mortgage are applicable to pledge.

(121) Articles 1033 and 1040-1042 in E.C.

Section II

The Effects of a Pledge

1. As Between the Contracting Parties

Obligations of the Pledgor

ARTICLE 1103 (E.C. 1099) OBLIGATION TO DELIVER PLEDGE

1. The pledgor is bound to deliver the thing pledged to the creditor or to the third person chosen by the contracting parties to hold the thing.

2. Provisions relating to the obligation as to delivery of a thing sold apply to the obligation as to delivery of a thing pledged.

ARTICLE 1104 (E.C. 1100) RETURN OF THING PLEDGED

The pledge is extinguished if the thing pledged returns into the hands of the pledgor, unless the pledgee proves that the return took place for a reason that was not intended to extinguish the pledge, subject always to the rights of third parties.

ARTICLE 1105 (E.C. 1101) GUARANTEE OF PLEDGE AND ITS EFFICACY BY PLEDGOR

The pledgor guarantees the pledge and its efficacy. He must not do anything which diminishes the value of the thing pledged or prevents the creditor exercising his rights derived from the contract. The pledges may, in case of urgency, take at the cost of the pledgor all necessary measures for the preservation of the thing pledged.

ARTICLE 1106 (E.C. 1102) DETERIORATION OR DESTRUCTION OF THING PLEDGED

1. A pledger guarantees the thing pledged against loss or deterioration when such loss or deterioration is due either to his negligence or to force majeure.

2. The provisions of Articles 1052 and 1053 (122) relating to the loss or deterioration of mortgaged property and to the transfer of the right of the creditor to any rights or property that have replaced the mortgaged property, apply to pledge.

(122) Articles 1048 and 1049 in E.C.

Obligations of the Pledgee

ARTICLE 1107 (E.C. 1103) OBLIGATION TO ENSURE SAFETY OF THING PLEDGED

If the pledgee takes delivery of the thing pledged, he must use for its preservation and maintenance the care expected from a reasonable person. He must answer for its loss or deterioration unless he can show that they were due to a cause not imputable to him.

ARTICLE 1108 (E.C. 1104) PRODUCE OF THING PLEDGED

1. The pledgee may not derive any gratuitous advantage from the thing pledged.

2. He must, in the absence of an agreement to the contrary, make the thing pledged render all the fruits that it is capable of producing.

3. The net revenue and the benefit that he obtains from the use of the thing pledged, must be applied in reduction of the debt even before it falls due: such revenue or benefit shall be imputed in the first place to expenses he has incurred for the preservation of and repairs to the thing pledged, then to expenses and interest, and then to the capital amount of the debt.

ARTICLE 1109 (E.C. 1105) PRODUCE IN PLACE OF INTEREST

1. If the thing pledged produces fruits or revenue, and the parties have agreed to substitute these fruits or revenue in whole or in part for interest, such an agreement will be valid to the extent that it does not exceed the maximum conventional rate of interest authorized by the law.

2. If the parties have not agreed that the fruits will be substituted for interest, and have not fixed the rate of interest, the interest will be fixed at the legal rate, provided that it does not exceed the amount of the fruits. If the parties have not fixed a date for payment of the secured debt, the creditor can only demand payment of his claim by a deduction from the fruits, subject to the right of the debtor to pay off his debt at any time he chooses to do so.

ARTICLE 1110 (E.C. 1106) MANAGEMENT OF THING PLEDGED BY PLEDGEE

1. The pledgee shall manage the thing pledged and shall use in such management the care expected from a reasonable person. He may not, without the consent of the pledgor, change the method of exploitation of the thing pledged and is bound to advise the pledgor immediately of any matter that requires his intervention.

2. If the pledgee misuses this right or is guilty of bad management or gross negligence, the pledgor shall have the right to demand that the thing be placed in judicial deposit or to claim resitution of the thing against payment of his debt. In the latter case, if the secured debt is not subject to interest and is not yet due for payment, the creditor will only be entitled to a sum equal to the amount of the debt, less interest at the legal rate from the date of payment to the date of maturity.

ARTICLE 1111 (E.C. 1107) RETURN OF THING PLEDGED

A pledgee must, upon receipt of his debt and the accessories, expenses and compensation for losses attached thereto, restitute the thing pledged to the pledgor.

ARTICLE 1112 (E.C. 1108 but Articles mentioned therein are 1050 and 1052)
APPLICATION OF PROVISIONS AS TO MORTGAGES BY AGREEMENT

The provisions of Article 1054 relating to the responsibility of a mortgagor who is not the debtor, and the provisions of Article 1056 relating to appropriation in case of non-payment and to sale without recourse to legal formalities, apply to pledge.

2. As Regards Third Parties

ARTICLE 1113 (E.C. 1109) VALIDITY OF PLEDGE AS AGAINST THIRD PARTIES

1. The thing pledged must be held by the pledgee or by the third party chosen by the parties to make the pledge valid as against third parties.

2. The thing pledged may secure several debts.

ARTICLE 1114 (E.C. 1110) RIGHT OF RETENTION OF THING PLEDGED

1. Pledge confers upon the pledgee the right to retain the thing pledged against any other person, subject to the rights of third parties which have been preserved in accordance with the law.

2. If the pledgee loses possession of the thing unknowingly or against his will, he has the right to reclaim the thing from any other person in accordance with the provisions of the law as to possession.

ARTICLE 1115 (E.C. 1111 but Article therein mentioned in para. e. is 230)
RESULTS OF PLEDGE AS REGARDS CAPITAL AND EXPENSES

A contract of pledge secures not only the capital of the debt, but also and in the same rank:

(a) Expenses of a necessary kind incurred for the preservation of the thing pledged;

(b) Compensation for losses resulting from defects in the thing pledged;

(c) The cost of the contract of loan, of the contract of pledge and of its inscription, if any;

(d) The costs incurred for the enforcement of the pledge;

(e) All interest that has fallen due, subject to the provisions of Article 233.

Section III
Extinguishment of Pledge

ARTICLE 1116 (E.C. 1112) EXTINGUISHMENT OF PLEDGE BY EXTINGUISHMENT OF DEBT SECURED

A right of pledge is extinguished as a result of the extinguishment of the secured debt; it is revived with the debt if the cause of the extinguishment of the debt disappears, without prejudice to the rights of third parties in good faith legally acquired in the interval between the extinguishment and the revival of the right of pledge.

ARTICLE 1117 (E.C. 1113) OTHER REASONS FOR EXTINGUISHMENT

A right of pledge is also extinguished by one of the following causes :
(a) The renunciation of the right by the pledgee if he has the legal capacity to liberate the debtor of the debt. The renunciation may result tacitly if the creditor voluntarily gives up the thing pledged or if he agrees without reserve to its alienation. If, however, the thing pledged is charged with a right in favour of a third party, the renunciation of the pledgee is only valid as regards such third party if such third party consents;
(b) The union of the right of pledge and that of ownership of the thing pledged in one and the same person;
(c) The loss of the thing pledged or the extinguishment of the right given in pledge.

Section IV

Certain Kinds of Pledge

1. Pledge of an Immovable

ARTICLE 1118 (E.C. 1114) VALIDITY OF PLEDGE OF IMMOVABLES AS AGAINST THIRD PARTIES

A pledge of an immovable is only valid as against third parties if, in addition to delivery of the pledged immovable to the pledgee, the contract of pledge is inscribed. The provisions governing the inscription of a mortgage apply to the inscription of pledge of an immovable.

ARTICLE 1119 (E.C. 1115) LEASE OF PROPERTY TO PLEDGOR

A pledgee of an immovable may lease the immovable to the pledgor without the contract of pledge being less valid as against third parties. If the lease is agreed to in the contract of pledge, it must be mentioned in the inscription of the pledge, but if the lease is agreed to after the pledge, it must be noted in the margin of that inscription. Notation is not necessary if the lease is tacitly renewed.

ARTICLE 1120 (E.C. 1116) PLEDGEE MUST ENSURE MAINTENANCE OF THING PLEDGED

1. A pledgee of an immovable must provide for the maintenance of the immovable, pay the expenses necessary for its preservation, the annual taxes and charges, and deduct the amount of these expenses from the fruits he has collected or obtain repayment from the price of the immovable in the rank of privilege accorded by law to such expenses.

2. He may free himself of these obligations by abandoning his right to the pledge.

2. Pledge of a Movable

ARTICLE 1121 (E.C. 1117) NECESSITY FOR WRITTEN CONTRACT OF PLEDGE

A pledge of a movable is only valid against third parties if, in addition to the delivery of the movable pledge, it is constituted by a written contract adequately setting out the amount of the secured debt and the object of the pledge and having an established date. The rank of the secured creditor will be fixed in accordance with such established date.

ARTICLE 1122 (E.C. 1118) PROVISIONS APPLYING TO EFFECTS OF PLEDGE OF MOVABLE

1. The rules relating to the effects of possession of material movables and bearer securities apply to the pledge of a movable.

2. A pledgee in good faith may, in particular, avail himself of his right of pledge even if the pledgor was not qualified to dispose of the thing pledged. On the other hand, a third party holder in good faith, even after the date of the pledge, may avail himself of the right he has acquired over the thing pledged.

ARTICLE 1123 (E.C. 1119) SALE OF PLEDGE IN DANGER OF PERISHING OR DETERIORATING

1. If the thing pledged appears to be in danger of perishing, deteriorating or diminishing in value, to such an extent that there is a danger that it will not suffice to secure the claim of the pledgee, and the pledgor does not apply for the restitution of the thing in exchange for another thing, either the pledgee or the pledgor may apply to the Judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.

2. The Judge shall, when authorizing the same, make an order as to the deposit of the price; in such a case the right of the creditor is transferred from the thing pledged to the price thereof.

ARTICLE 1124 (E.C. 1120) OCCURRENCE OF SUITABLE OPPORTUNITY FOR SALE OF PLEDGE

If a suitable occasion presents itself for the sale of the thing pledged and the sale is advantageous, the pledgor may, even before the maturity of the debt, apply to the Judge for authority to sell the thing. The Judge, when authorizing the sale, will fix the conditions and make an order as to the deposit of the price.

ARTICLE 1125 (E.C. 1121) SALE OF PLEDGE WHEN DEBT DUE FOR PAYMENT

1. The pledgee may, upon failure of payment of the debt, apply to the Judge for authority to sell the thing pledged by public auction or at its value at the time on the stock exchange or on the market.

2. The pledgee may also apply to the Judge for an order authorizing him to appropriate the thing pledged in payment of the debt, the value thereof being charged against him in accordance with an estimate by experts.

ARTICLE 1126 (E.C. 1122) EXTENT OF APPLICATION OF PREVIOUS PROVISIONS

The preceding provisions apply, in so far as they are not incompatible either with provisions of commercial laws or provisions relating to institutions authorized to lend money on pledge, or with the laws and regulations governing special cases as to the pledge of movables.

3. Pledge of Debts

ARTICLE 1127 (E.C. 1123) VALIDITY OF PLEDGE OF DEBT AND ITS RANK

1. A pledge of a debt is only valid as regards the debtor upon notification to or or acceptance by the debtor of the pledge, as provided for in Article 292 (123).

(123) Art. 305 in E.C.

2. The pledge is only valid as against third parties if the pledgee holds the title of the pledged debt. The rank of the pledge is fixed as at the established date of the notification or of the acceptance of the pledge.

ARTICLE 1128 (E.C. 1124) PLEDGE OF BONDS

Nominative bonds and bonds payable to order may be pledged in accordance with the special procedure prescribed by law for the transfer of such bonds, provided that it is stated that the transfer is made by way of pledge; the contract of pledge is completed without notification being necessary.

ARTICLE 1129 (E.C. 1125) DEBTS WHICH MAY NOT BE PLEDGED

A debt which cannot be assigned or attached cannot be pledged.

ARTICLE 1130 (E.C. 1126) RIGHT OF PLEDGEE TO COLLECT INTEREST ON PLEDGED DEBT

1. In the absence of an agreement to the contrary, the pledgee has the right to collect interest on the pledged debt which falls due after the constitution of the pledge. He has also the right to collect periodical payments appertaining to the pledged debt upon condition that he sets off the amounts so collected by him first against expenses, then against the interest and then against the capital of the of the debt secured by the pledge.

2. A pledgee is bound to look to the protection of the pledged debt. If he has the right to collect any part of the debt without the intervention of the pledgor he is bound to collect such part of the debt at the time and place fixed for payment and immediately inform the pledgor thereof.

ARTICLE 1131 (E.C. 1127) DEFENCES AVAILABLE TO DEBTOR

The debtor of a debt given in pledge may set up against the pledgee the defences relative to the validity of the debt secured by the pledge as well as those defences he may have against his own creditor, to the extent that an assigned debtor may set up defences against the assignee in the case of an assignment of debt.

ARTICLE 1132 (E.C. 1128) PLEDGED DEBT FALLING DUE BEFORE ACTUAL DEBT SECURED BY PLEDGE

1. If the pledged debt falls due for payment before the actual debt secured by the pledge, the debtor must discharge his debt to the pledgee and the pledgor jointly; The pledgee and the pledgor may each demand the debtor to deposit the amount paid by him, in which case the pledge is transferred to the amount so deposited.

2. The pledgee and the pledgor must, without prejudice to the rights of the secured creditor, co-operate together for the investment of the amount paid by the debtor to the best advantage of the pledgor, and they must immediately constitute a new pledge in favour of the pledgee.

ARTICLE 1133 (E.C. 1129) FALLING DUE OF DEBT AND SECURED DEBT AT SAME TIME

If the pledged debt and the secured debt fall due, the pledgee who has not been paid may collect the debt pledged up to the amount due to him and demand that the debt be sold or be allocated to him in accordance with the provisions of Article 1125, para. 2 (124).

(124) Art. 1121, para.2 in E.C.

Chapter V

Privileged Rights

Section I

General Provisions

ARTICLE 1134 (E.C. 1130) DEFINITION

1. A privilege is a right of preference granted by law to a particular right by reason of its quality (125).

(125) Compare Article 983 of the Quebec Civil Code as follows:
"A privilege is a right which a creditor has of being preferred to other creditors according to the origin of his claim..."

2. No right is privileged except by virtue of a provision of the law.

ARTICLE 1135 (E.C. 1131) RANK OF PRIVILEGE

1. The rank of a privilege is fixed by law; in the absence of a formal provision of the law fixing the preferential rank of a privileged right it ranks after any other privilege provided for in this Chapter.

2. In the absence of a provision of the law to the contrary, privileged rights of the same rank will be paid rateably.

ARTICLE 1136 (E.C. 1132) GENERAL AND SPECIAL PRIVILEGE

General privileges extend to all movable and immovable property of the debtor. Special privileges are limited to a specific movable or immovable only (126).

(126) Compare Article 1980 of the Quebec Civil Code as follows:
"Whoever incurs a personal obligation, renders liable for its fulfilment all his property, movable and immovable, present and future, except such property as is especially declared to be exempt from seizure."

ARTICLE 1137 (E.C. 1133) PRIVILEGE UPON MOVABLE

1. A privilege cannot be set up against the holder in good faith of a movable.

2. A lessor of an immovable and an hotel proprietor are deemed, in so far as this Article applies, to be holders of furniture used in the leased premises and of effects brought into the hotel by travellers respectively.

3. If a creditor has reasonable grounds to apprehend that movables charged with a privilege in his favour will be misappropriated, he may apply for them to be placed in judicial custody.

ARTICLE 1138 (E.C. 1134) PRIVILEGE UPON IMMOVABLES

1. Provisions of the law relating to mortgages are applicable to privileged rights over immovable property in so far as they are not incompatible with the nature of these rights. The provisions relating to purge, to inscription and the effects of inscription, and to renewal and radiation of inscription, are in particular applicable to privileges over immovables.

2. General privileges, however, even over immovables, are not subject to publication nor do they give a right of tracing the property into the hands of subsequent holders. Privileges over immovables securing sums due to the State Treasury are also not subject to publication. All these privileges rank prior to any other privilege over immovables or mortgages, whatever may be the date of their inscription. As between each other, the privilege securing sums due to the State Treasury ranks prior to general privileges.

ARTICLE 1139 (E.C. 1135) PERISHING OR DETERIORATION OF THING SUBJECT TO PRIVILEGE

Provisions applying to the loss or deterioration of mortgaged property apply also to privileges.

ARTICLE 1140 (E.C. 1136) EXTINGUISHMENT OF PRIVILEGE

In the absence of a provision of the law to the contrary, privileges are extinguished in the same way and in accordance with the same rules as a mortgage or a pledge.

Section II

Kinds of Privileges

ARTICLE 1141 (E.C. 1137) PRIVILEGED RIGHTS

In addition to the privileges established by special provisions of the law, the rights enumerated in the following Articles are privileged.

1. General Privileges and Special Privileges Over Movables

ARTICLE 1142 (E.C. 1138) PRIVILEGE IN RESPECT OF COSTS OF LEGAL PROCEEDINGS

1. Costs of legal proceedings incurred, in the common interest of all the creditors, for the preservation and sale of the property of the debtor, have a privilege over the price of such property.

2. Such costs are payable in priority to any other claim, whether privileged or secured by a mortgage, including claims of creditors for whose benefit such costs have been incurred. Costs incurred for the sale of the property are payable in priority to the costs of the procedure of distribution.

ARTICLE 1143 (E.C. 1139) SUMS DUE TO STATE TREASURY

1. Sums due to the State Treasury for taxes, duties, and other dues of any kind are privileged in accordance with the conditions laid down by laws and regulations issued in this connection.

2. Such sums shall be paid out of the proceeds of sale of the property charged with this privilege, in whosoever's hands it may be, and before all other rights, whether privileged or secured by a mortgage, except costs of legal proceedings.

ARTICLE 1144 (E.C. 1140) EXPENSES INCURRED FOR PRESERVATION AND REPAIR OF MOVABLE

1. Expenses incurred for the preservation of, and repairs of a necessary kind to, a movable are secured by a privilege over the movable as a whole.

2. Such expenses are payable out of the proceeds of sale of the movable so charged, and rank immediately after the costs of legal proceedings and sums due to the State Treasury. As between them such expenses will rank in the inverse order of the dates on which they are incurred.

ARTICLE 1145 (E.C. 1141) GENERAL PRIVILEGES

1. The following claims are secured by a privilege over all the debtor's property, whether movable or immovable :

(a) Sums due to servants, clerks, workmen and other wage-earners for wages and emoluments of any kind due to them for the last six months.

(b) Sums due for foodstuffs and clothes supplied to the debtor and to persons depending on him during the last six months;

(c) Alimony due by the debtor to members of his family, for the last six months.

(d) These claims rank immediately after the cost of legal proceedings, sums due to the State Treasury and expenses for the preservation of an repairs to the property. As between them such claims are paid rateably.

ARTICLE 1146 (E.C. 1142) PRIVILEGE IN MATTERS TO DO WITH AGRICULTURE

1. Sums disbursed for seeds, manure and other fertilizers and insecticides, and sums disbursed for cultivation and harvesting are secured by a privilege over the crop for whose production they are spent; they will have the same rank.

2. Such sums are payable out of the proceeds of sale of crops, immediately after the claims above referred to.

3. Sums due in respect of agricultural implements are, in a like manner, secured by a privilege over these implements.

ARTICLE 1147 (E.C. 1143) PRIVILEGE IN RESPECT OF LEASED PROPERTY

1. House and agricultural rents for two years, or for the duration of the lease if less than two years, and all sums due to the lessor by virtue of the contract of lease, are secured by a privilege over all attachable movables and crops existing on the leased property and belonging to the lessee.

2. Subject to the provisions relating to stolen or lost property, this privilege is enforceable even when the movables belong to the wife of the lessee or to a third party, as long as it is not established that the lessor had knowledge, at the time the movables were brought on to the leased property, of the existence of a third party's rights.

3. This privilege is also enforceable over movables and crops belonging to a sub-lessee, if the lessor had expressly prohibited sub-letting. If sub-letting was not prohibited, the privilege will only be enforceable up to the amount due by the sub-lessee to the principal lessee on the date a formal summons is served by the lessor upon the sub-lessee.

4. These privileged claims are payable out of the proceeds of sale of such movables and crops subject to such privilege, immediately after the claims above-mentioned, with the exception of claims in respect of which the privilege does not operate as against the lessor in as much as he is a third party holder in good faith.

5. If movables and crops so charged are removed from the leased property, notwithstanding the objection of the lessor or without his knowledge, and the movables remaining on the property are not sufficient to secure the privileged claims, the privilege is enforceable on the movables and crops so removed subject to right acquired on these movables and crops by third parties in good faith. The privilege shall remain in force for three years from the date of the removal, even to the detriment of a third party's rights, if the lessor effects within the prescribed time limit an attachment on the movables and crops removed. If, however, the movables and crops are sold to a purchaser in good faith in the market by public auction or by a merchant dealing in similar articles, the lessor must reimburse the purchaser with the price.

ARTICLE 1148 (E.C. 1144) PRIVILEGE OF HOTEL KEEPER

1. Sums due to hotel proprietors by a traveller for accommodation, food and expenses incurred for his account, are secured by a privilege over the effects brought by the traveller to the hotel or its annexes.

2. Unless it can be shown that the hotel proprietor knew of the existence of a third party's rights over these effects at the time they were brought on to the premises, this privilege may be enforced on these effects, even if they do not belong to the traveller, provided that they are not lost or stolen property. An hotel proprietor may, if he has not been paid in full, object to the removal of these effects, and if they are removed notwithstanding his objection or without his knowledge, the privilege continues to be enforceable on them, subject to the rights acquired by third parties in good faith.

3. An hotel proprietor's privilege has the same rank as a lessor's privilege. Should the effects in question be subject to both claims, the first in date will have priority, unless it is not enforceable as against the other.

ARTICLE 1149 (E.C. 1145) PRIVILEGE OF VENDOR OF MOVABLE

1. Sums due to the vendor of a movable for price and accessories are secured by a privilege over the movable sold. This privilege is enforceable as long as the movable sold preserves its identity, subject to the rights acquired in good faith by third parties and subject to the special provisions applicable in commercial matters.

2. This privilege follows in rank privileges over movables above referred to. It operates, however, as against the lessor and the hotel proprietor, if it can be proved that they had knowledge of such privilege at the time the thing sold was brought on to the leased property or into the hotel.

ARTICLE 1150 (E.C. 1146) PRIVILEGE RESULTING FROM PARTITION OF MOVABLE

1. Co-owners who have partitioned a movable have a privilege over this movable in respect of their respective remedies against each other resulting from the partition, and for payment of any difference reverting to them in the partition.

2. The privilege of a co-partitioner has the same rank as a vendor's privilege. Should the movable in question be subject to both rights, the first in date will have priority.

Special Privileges Over Immovables

ARTICLE 1151 (E.C. 1148) PRIVILEGE OF CONTRACTORS AND ARCHITECTS

1. Sums due to contractors and architects who have been entrusted with the erection, reconstruction, repair or maintenance of buildings or other works, have a privilege over such works but only in respect of the increase in value resulting from such works as at the time of the alienation of the immovable.

2. Such privilege must be inscribed: its rank is fixed by the date of its inscription.